

AFSCME
MEMORANDUM OF UNDERSTANDING
TABLE OF CONTENTS

Preamble	1
Article I – Term	1
Article II – Representation	1
Meet & Confer Process	
Dues Deduction Procedure	2
Voluntary Union Dues Deductions	2
Voluntary Agency Fee Deductions	2
Involuntary Deduction Process	2
Article III – Management Rights	4
Article IV – Definitions	5
Personnel Rules	5
Comprehensive MOU	5
Article V – Salaries, Wages & Paid Benefits	5
Holiday Pay	6
Other Pay	6
Hours of Work and Overtime	8
Health Benefits	9
Uniforms	10
Article VI – EIP	10
Educational Incentive Program	10
Tuition Reimbursement	10
Article VII – Types of Leave	11
Sick Leave Accrual	11
Extended Leave Policy	11
Bereavement Leave	11
Release Time	12
Vacation	13
Article VIII – Miscellaneous Benefits	14

Article IX – Miscellaneous Policies and Procedures	15
Work Stoppage, Any Job Action, Slowdown	15
Light Duty Determination	16
Substance Abuse Policy	16
Class A License	16
Citywide Safety Committee	16
Lay Off Procedure	17
IRS 125 Program	18
Work Furlough	18
Article X – Grievance Procedure	18
Informal and Formal Grievances	19
Employee Relations Panel	20
General Conditions	21
Article XI – Miscellaneous	21
Article XII – Ratification	22
Signature Page	22
Exhibits	
Exhibit A Salary Schedule July 1, 2005 – June 17, 2006	23
Exhibit B Salary Schedule June 18, 2006 – December 16, 2006	25
Exhibit C Salary Schedule December 17, 2006 – June 30, 2007	27
Exhibit D Salary Schedule July 1, 2007 – December 29, 2007	29
Exhibit E Salary Schedule December 30, 2007 – June 30, 2008	31
Exhibit F Educational Incentive Pay Program	33
Exhibit G DOT Drug and Alcohol Testing Program	47
Side Letters	
Discipline Appeal	
Compensation Survey Procedures	

This Memorandum of Understanding has been executed by representatives of the Morgan Hill City Council (City) and representatives of the American Federation of State, County and Municipal Employees Local 101 (Union).

ARTICLE I. — TERM

- 1.01 The term of this Agreement shall be thirty-six months commencing July 1, 2005, and ending June 30, 2008.

ARTICLE II. — REPRESENTATION

- 2.01 The Union is a recognized employee organization within the meaning of the City's Employer-Employee Relations Resolution No. 1593.
- 2.02 The Union represents all regular full and part-time City employees excluding positions represented by the Police Officers' Association (POA), the Community Service Officers' Association (CSOA), and those identified in the Management/Professional Pay Plan.
- 2.03 Regular Part-Time Employees – Regular part-time employees in the AFSCME represented classifications who work at least 20 hours per week shall receive insurance, educational incentive, tuition reimbursement, and paid leave benefits provided for in this agreement on a pro-rated basis, according to the number of hours worked per week.
- 2.04 MEET & CONFER PROCESS
- 2.04.01 The Union is the only employee organization which is entitled to meet and confer with the City on behalf of represented employees as outlined in Item 2.02 above.
- 2.04.02 Representatives of the City and the Union have meet and conferred, pursuant to the provisions of the Meyers-Milias-Brown Act and Resolution No. 4955 for the purpose of reaching agreement concerning all matters within the scope of representation for the City employees in the Unit during the term of the Memorandum of Understanding.
- 2.04.03 An agreement has been reached.
- 2.04.04 The Union agrees that it will not attempt to meet and confer on any items within the scope of the representation, as defined by the Meyers-Milias-Brown Act and City Resolution No. 1138, during the term of the Memorandum of Understanding (except as provided in the Memorandum).
- 2.04.05 No agreement, alteration, understanding, variation, waiver, or modification of any of the terms or provisions contained herein shall in any manner be finding upon the parties hereto, unless made and executed in writing by all parties hereto, and if required, approved and implemented by the City and the Union.

2.05 DUES DEDUCTION PROCEDURE

2.05.01 VOLUNTARY UNION DUES DEDUCTIONS

The City shall deduct Union dues from the pay checks of Union members if the Union follows the requirements of this paragraph. Union dues are the dues that the Union charges Union members for membership in the Union, representation in collective bargaining and other employment related matters within the scope of representation and Union political activity.

The City shall only deduct Union dues from an employee's pay check if the employee has submitted a signed authorization card to the City clearly stating the employee's desire for the City to deduct Union dues. It is understood and agreed by both the City and Union that the Union accepts responsibility for submitting authorization cards to the City and for informing the City whenever an employee withdraws his or her authorization. Such deductions shall be made from each authorizing employee's pay check and remitted to the Union each month.

2.05.02 VOLUNTARY AGENCY FEE DEDUCTIONS

The City shall deduct agency fees from the pay checks of unit members if the Union follows the requirements of this paragraph. Agency fees represent the percentage of Union dues used for representing unit members in their employment with the City and other categories of chargeable expenses recognized by Federal court decisions. Agency fees do not include amounts used for Union political activity or other categories of expenses deemed non-chargeable to unit members by Federal court decisions.

The City shall only deduct agency fees under this subsection from an employee's pay check if the employee has submitted a signed authorization card to the City clearly stating the employee's desire for the City to deduct agency fees. It is understood and agreed by both the City and Union that the Union accepts responsibility for submitting authorization cards to the City and for informing the City whenever an employee withdraws his or her authorization. Such deductions shall be made from each authorizing employee's pay check and remitted to the Union each month.

2.05.03 INVOLUNTARY DEDUCTION PROCESS

The Union and City agrees to conduct involuntary agency fee deductions in accordance with State and Federal law as follows:

- a. Fee Amount: During the term of this Agreement, every employee in the representation unit covered by the Memorandum of Understanding shall remain a member in good standing of Union; or, pay to Union a monthly agency fee not greater than the amount chargeable to non-members for representation and bargaining services; or, in the case of an employee who certifies that he/she is a member of a recognized religion, body or sect which has historically held conscientious objection to joining or financially

supporting public employee organizations, pay a sum equal to agency fees to one of the following organizations: Community Solutions, El Toro Youth Center, Morgan Hill Community Foundation, Morgan Hill Community Health Foundation, United Way, Mt. Madonna YMCA.

- b. New Employee Compliance: Newly hired employees shall comply with one of these requirements within thirty (30) days of starting employment with the City.
- c. Non-Deduction Periods: The deductions in this subsection shall not apply during any period where an employee is in an unpaid status, or does not have enough earnings to pay the dues or fees.
- d. Excluded Employees: This involuntary deduction provision shall not apply to management, supervisory or confidential employees. Current supervisory positions include Administrative Secretary, Associate Engineer, Senior Building Inspector/Facilities Maintenance Coordinator, Maintenance Supervisor, Public Works Inspection Supervisor, and Utility Supervisor.
- e. Involuntary Agency Fee Deduction Process: The involuntary agency fee deduction process will operate as follows:
 - i. Union Certification: The City shall deduct an agency fee from the salary of each bargaining unit member that the Union advises the City in writing has not authorized a Union dues or agency fee deduction in writing. Union represents that it has consulted with knowledgeable legal counsel and has developed a plan - including but not limited to current audits, accuracy of agency fee calculation, and legal sufficiency of employee challenge procedures - that it certifies satisfies all constitutional and statutory requirements for involuntary agency fee deductions.
 - ii. City Review: The City will review Union's plan, and based on the discussions and understandings between counsel for the City and Union, the City will commence involuntary deductions after it has confirmed the legal sufficiency of Union's plan.
 - iii. Non-Union Employee Notice: No later than September 1 of each calendar year the Union will provide each non-union employee with information showing the major categories of Union expenses, those expenses related to its duty as the exclusive bargaining agent, the amount of the fair share fee, the method by which the fee was calculated and that calendar year's verifications by independent auditors and any other information that must be provided to employees pursuant to Government Code section 3502.5. The City will not commence deductions until the non-union employees have received all of this information.
 - iv. Timing of Challenge Hearing Union: Union will use its best efforts to insure that a hearing to challenge the amount of the agency fee will be

held within four months after the date that an employee notifies the Union of a challenge to the amount of the agency fee or the legal adequacy of this involuntary agency fee procedure.

- v. Selection of Hearing Officer: Non-union employee challenges will be heard by an impartial decision maker selected by an independent third party such as the American Arbitration Association or the State Mediation and Conciliation Service.
- vi. Escrow: Union will escrow either 100% of the agency fee or the amount that is reasonably in dispute at its reasonable discretion and to the extent permitted under the law during the pendency of any challenge to the amount of the agency fee or to the adequacy of this involuntary agency fee deduction procedure.
- f. Indemnification, Defense and Hold Harmless: Union agrees to indemnify, defend and hold the City harmless against any and all claims, suits, orders, judgments, costs or attorney's fees, including but not limited to pre-litigation, administrative staff, retained outside counsel costs and any other matters for which the City may seek indemnification under Government Code section 3502.5, brought or issued against the City as a result of the action taken or not taken by the City under the provisions of this Agency Shop agreement.
- g. Reimbursement of City Expenses: Union will pay all legal and administrative expenses incurred by the City in reviewing or administering non-union employee challenges to the adequacy of Union's notice to non-union employees or to the chargeable amount of the agency fee.

ARTICLE III. — MANAGEMENT RIGHTS

- 3.01 The rights of the City as exercised by the City Council and the City administration include, but are not limited to the exclusive right to determine the mission of its constituent departments, commissions and boards; set standards of service, determine the procedures and standards of selection for employment; direct its employees; take disciplinary action; relieve its employees from duty because of lack of work or other legitimate reasons; maintain the efficiency of governmental operations; determine the methods, means, and personnel by which government operations are to be conducted; determine the content of job classifications, subject to any requirement to meet and confer or under current state law; require that employees work overtime; and exercise complete control and discretion over its organization and the technology of performing its work; except that any agreement between the City and Association evidenced by a memorandum of understanding pursuant to Government Code 3500 et. seq. shall take precedence over any of the above enumerated employee and management rights; and that such memorandum of understanding will be honored in good faith during the life of this contract; subject to the City's rights to determine when an emergency exists and to take all necessary action to carry out its mission in emergencies.

- 3.02 Nothing in this article shall be construed to limit, amend, decrease, revoke or otherwise modify the rights vested in the City by any law regulating, authorizing or empowering the City to act or refrain from acting.

ARTICLE IV. — DEFINITIONS

- 4.01 The term Salaries, Wages or Salary and Wages shall mean the gross monthly base pay prior to any deductions.
- 4.02 The term “PERSONNEL RULES” as used in this Agreement means those regulations titled “City of Morgan Hill Personnel Rules and Regulations” enacted as Resolution No. 1485 and thereafter and hereafter amended.

4.03 **PERSONNEL RULES**

It is understood that during the term of this Memorandum of Understanding the City will be reviewing and updating, where needed, the Personnel Rules and Regulations of the City. The City shall meet and confer with the Union on revisions which are within the scope of representation.

4.04 **COMPREHENSIVE MOU**

During the terms of this agreement the City intends to develop a more comprehensive MOU including the addition and/or modification of many items as found in the current City Personnel Rules and Regulations. It is understood the City will meet and confer with the Union regarding any proposed changes at the time these items are ready to be included in the MOU.

In the event a conflict in interpretation between these personnel rules as included by reference and similar sections as contained in this MOU, the language in the MOU will be used for interpretation.

ARTICLE V. — SALARIES, WAGES & PAID BENEFITS

- 5.01 The salaries and wages paid by the City to employees in the Unit, as shown in Exhibit A, will be in accordance with the job classifications they hold effective June 19, 2005.
- 5.02 The salaries and wages paid by the City to employees in the Unit, as shown in Exhibit B will be in accordance with the job classifications they hold with pay rates to be increased by 3.5% percent effective June 18, 2006.
- 5.03 The salaries and wages paid by the City to employees in the Unit, as shown in Exhibit C, will be in accordance with the job classifications they hold with pay rates to be increased by 1.5% effective December 17, 2006.
- 5.04 The salaries and wages paid by the City to employees in the Unit, as shown in Exhibit D will be in accordance with the job classifications they hold with pay rates to be increased by 3% effective July 1, 2007.

5.05 The salaries and wages paid by the City to employees in the Unit, as shown in Exhibit E will be in accordance with the job classifications they hold with pay rates to be increased by 2% effective December 30, 2007.

5.06 HOLIDAY PAY

5.06.01 The City of Morgan Hill will observe the following holidays: New Year's Day, Martin Luther King Day, President's Day, Cesar Chavez Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, Day after Thanksgiving, Christmas Eve and Christmas. Employees will receive one-half day holiday to be observed on either December 22, 2005, or December 30, 2005, during the first year of this agreement; December 21, 2006, or December 29, 2006, for the second year of this agreement; and December 21, 2007 or December 31, 2007 for the third year of this agreement. The City will maintain minimum staffing levels on these days and the Department Director will determine which half day the employee may take off.

- a. Each employee will receive two floating holidays each fiscal year to be used during that fiscal year with the approval of the employee's supervisor.
- b. Recognized holidays of the City of Morgan Hill will be aligned to coincide with school holidays in the Morgan Hill Unified School District.
- c. Any hours worked on a holiday shall be compensated at double time. If a holiday falls on a Friday or a Monday, any hours worked on the Saturday and/or Sunday connected to the holiday will be compensated at the holiday pay rate.
- d. Holiday standby shall be compensated at the rate of three (3) hours at double time.

5.07 OTHER PAY

5.07.01 Employees called back to work outside their regular work shift, shall be compensated for a minimum of two hours at time and one half of their regular pay rate.

5.07.02 The City will pay five (5%) percent of the employee's hourly rate for the person currently assigned to street sweeping duties between the hours of 6:00 p.m. and 8:00 a.m. as a nighttime differential. This payment will stop when this person quits doing the street sweeping function. Other employees who work a modified shift schedule during these hours will not receive a night differential.

5.07.03 Weekend Standby shall be compensated at the rate of three (3) hours at a time and one-half for each 24 hour period covered. Compensation for employees assigned to standby coverage shall be at the rate of 1.25 hours at time and one-half for each week-night of standby. The week-night standby period shall begin at the end of the regular work shift, and end with the commencement of the regular work shift the

following morning. Employees assigned standby must be able to report to the Corporation Yard within thirty (30) minutes from the time they are called.

- 5.07.04 Employees working more than 12 hours in a day shall receive double time for hours worked beginning with the 13th hour of work.
- 5.07.05 Whenever an employee is temporarily assigned in writing by their supervisor to work in a higher classification and therefore performs substantially all of the duties of the higher classification for a period of more than fifteen (15) cumulative working days, the employee shall be entitled to out of class pay on the sixteenth (16) day of assignment. Having once satisfied the 15 day qualifying requirement, any subsequent such assignment shall be so compensated an additional five (5%) percent beginning with the first day of reassignment.
- 5.07.06 Should the assignment last more than 90 consecutive days, the employee shall be compensated within the normal range of the occupied classification, if not already within such, beginning with the 91st day.
- 5.07.07 Except in the case of emergencies, employees shall receive a lunch break after four (4) hours of overtime worked.
- 5.07.08 Any employee required to work more than sixteen (16) hours within a twenty-four (24) hour period shall be entitled to an eight (8) hour rest period prior to returning to work. If any portion of the rest period occurs during the employee's regular scheduled work hours, the employee shall receive normal compensation for that time.
- 5.07.09 Unit employees identified by a Department Director to use Spanish or American Sign Language in their work, and who are certified by a three-person employee board shall receive five (5%) percent of the employee's base salary as BILINGUAL PAY.
 - a. The City may, at its sole discretion, identify other languages which are helpful to the operation of the City.
 - b. All employees receiving bilingual pay shall be subject to recertification every two years unless the certification is waived by the City. Any employees wishing to receive bilingual pay must be certified prior to pay implementation. The Certification process will be completed by a three-person employee board and will consist of a verbal test designed to establish a basic conversational level of competence.
 - c. Implementation of bilingual pay shall be at the start of the pay period following bilingual certification.

- 5.07.10 All employees in classifications that are required by the State of California to have

Water Distribution Certificates to do their jobs, and who in fact possess the appropriate current certificate, will be entitled to receive an additional 2.5% of base pay. Employees will receive the additional 2.5% of base pay in the pay period following the date the City receives the employee's current certificate. If a Maintenance Worker has the required certification and is assigned to work in a position that requires the certification, he/she will receive the 2.5% certification pay for those hours worked in that assignment.

5.08 HOURS OF WORK AND OVERTIME

- 5.08.01 For the purposes of calculating overtime, comp time and defining payroll periods, the established work week is 12:01 a.m. Sunday morning to 12:00 midnight the following Saturday night.
- 5.08.02 The work day, for pay purposes, shall be a 24-hour period commencing with the beginning of the employee's regularly scheduled shift.
- 5.08.03 The normal work schedule shall be forty (40) hours consisting of five (5) consecutive days of eight hours each, exclusive of a lunch period, Monday through Friday. Subject to City policy; alternative work schedules may be utilized. Should the normal work schedule need to be modified in terms of days or shift hours by the Department Director to facilitate the needs of the City, such modification in normal work schedules will be discussed with organization representatives as to methods for changing or rotating assignments prior to any change. The affected employee should be notified at least five (5) full working days prior to any change. Such modification cannot exceed a forty hour work week unless additional hours are worked as a result of a shift change.
- 5.08.04 Overtime/Compensatory time is defined as one-and-a-half times an employee's total hourly salary. Overtime/Comp time is paid for any amount of time exceeding fifteen (15) minutes more than the employee's normal work shift, provided the employee is working an eight hour or more work shift or any work time in excess of the forty (40) hour work week unless additional hours are worked as a result of a shift change. Overtime/Compensatory time for a regular part-time employee who works over his/her normal work schedule will accrue compensatory time at the employee's normal rate of hourly salary for hours under forty (40) per week, and one-and-a-half times for hours over forty (40) per week. All such time must be approved in advance with the employee's supervisor or Department Director. Overtime is paid on completed fifteen (15) minute increments above the half-hour minimum. Time spent on paid sick leave, disability leave, vacation leave, military leave, compensatory time off, or other authorized paid leave shall be deemed time worked for the purposes of this Article.
- 5.08.05 Unit personnel will have the option of receiving either paid overtime or compensatory time off. The compensatory time accrual limit shall be two hundred (200) hours maximum

5.08.06 During emergency situations (EOC activation) (floods, earthquakes, severe storms, etc.) the City reserves the right to require that all overtime be compensated in pay not CTO.

5.08.07 Reporting for Duty: Employees who are unable to report for work at the beginning of their established shift shall notify their immediate supervisor at least 30 minutes prior to the commencement of that shift. Employees shall follow departmental procedures for providing notice of their absence.

Failure to report to work for three consecutive days (or shifts if applicable for which the employee is scheduled to work), without giving proper notice to the City, will be considered a voluntary resignation of employment even if a co-worker or supervisor covers the shift or otherwise arranges for coverage of the shift. Such employee shall, however, be reinstated provided the employee satisfactorily shows that his/her failure to report was the result of reasonable extenuating circumstances beyond the employee's control.

5.08.08 Should the City change or increase the duties, requirements, or safety hazards of any job classification(s) represented herein, City will meet and confer with Union no later than thirty (30) days before effective date of such change or changes for the purpose of negotiating appropriate salary adjustment(s) for the so changed classification(s) at a level appropriate to compensate for the increased duties, requirements or safety hazards.

5.09 HEALTH BENEFITS

5.09.01 The City will continue paying health care premiums as stated in the 2003-2005 AFSCME MOU through December 31, 2005. Effective January 1, 2006, the City will contribute to the medical and dental health plans as follows:

- a. Ninety percent (90%) of the lowest cost medical health plan plus dental for employees' with family coverage.
- b. Ninety-six and one-half percent (96.5%) of the lowest cost medical health plan plus dental for employees with employee plus one coverage.
- c. For those employees who waive medical and/or dental coverage, or who have employee only coverage:
 - i. The health allowance contribution will be \$575. Employees not using all of the benefit amount shall be entitled to use fifty (50%) percent of the surplus amount for optional benefits or for participating in medical reimbursement or dependent care expense accounts. If employees do not use their fifty (50%) percent surplus for optional benefits, it will be added to their salary as taxable income.
 - ii. At the time when the lowest cost medical plan plus dental coverage exceeds the \$575 health care allowance, the city shall provide one-

hundred percent (100%) of the lowest cost medical health plan plus dental.

- iii. Employees who waive medical coverage shall be entitled to \$250. Employees who waive dental coverage shall be entitled to \$40.

- 5.09.02 The City agrees to provide, at City expense up to 100 percent of the premium cost per employee, the Psychological Health Program as presently constituted.
- 5.09.03 All members shall have the option of continuing their current medical insurance at the employees own cost after retirement. This option can continue as long as there is no lapse in coverage and so long as the employee pays the monthly premium to PERS or to the Finance Department as per their billing requirements.
- 5.09.04 The PERS Medical insurance program shall remain in effect for the term of this agreement or unless the parties agree to terminate the agreement with PERS.
- 5.09.05 Between July 1, 2005, and June 30, 2008, the City's Benefits Committee will consider programs to enhance employee benefit package. AFSCME shall designate a member to serve on the Benefits Committee.

5.10 UNIFORMS

- 5.10.01 The City will provide Uniforms for those employees in the Parks, Streets and Utility Divisions required to wear uniforms as a condition of employment. All divisions will be provided soft caps with the City logo attached. With the exception of City provided soft cap or safety helmet, no other caps, head gear, or hats are to be worn. The City will also provide regular uniform cleaning. Employees assigned uniforms are to report to work in uniforms that are neat and clean.
- 5.10.02 The City will reimburse employees in the Parks, Street, Sewer and Water Divisions, and Public Works and Building Inspectors, and other employees assigned by their director to perform field inspection duties up to two hundred dollars (\$200.00) per year towards the purchase of Safety Shoes. Proof of purchase is required; once purchased, shoes must be worn during all working hours.

ARTICLE VI. — EIP

6.01 EDUCATIONAL INCENTIVE PROGRAM

This program is described in a document entitled AFSCME/EIP policy and is attached as Exhibit D. Mutually agreed upon changes to the EIP policy may be implemented during the term of this agreement.

6.02 TUITION REIMBURSEMENT

The City shall provide a tuition reimbursement program of up to one thousand dollars (\$1,000.00) per fiscal year for the cost of books and tuition for classes

beneficial to the employee's career development. Mandatory fees required to attend classes and parking fees also may be reimbursed through tuition reimbursement. All classes must be approved in advance by the Department Director. Reimbursement will take place upon a successful completion or passing of the course.

ARTICLE VII. — TYPES OF LEAVE

7.01 SICK LEAVE ACCRUAL

7.01.01 Sick Leave credit shall be accumulated on the basis of eight hours per month. The employee's accumulated sick leave is unlimited.

7.01.02 The City will pay twenty-five (25%) percent of unused sick leave at the end of each calendar year. This payment will be based on semi-annual calculations, made on June 1, and December 1, of each year. Employees who have a balance of at least 160 hours of sick leave may receive fifty (50%) percent of the unused sick leave earned that year. The balance of sick leave will be added to the employee's accumulated sick leave.

The twenty-five percent payout will not be calculated or paid to any employee absent from work on a work related injury which is being covered by worker's compensation.

7.01.03 Upon retirement, 100 % of the employees' unused sick leave balance will be credited to the employees' retirement eligibility. This amount would then be converted into time in service and added to the employee's retirement eligibility. (Reference - City contract with PERS, Section 20862.8)

7.01.04 Union employees shall be allowed to utilize two (2) PERSONAL LEAVE DAYS per fiscal year chargeable to sick leave.

7.02 EXTENDED LEAVE POLICY

In the event an employee is absent from work for illness or injury, unless notified otherwise, prior to the end of the affected pay period, the time off will be coded and deducted from (1) accumulated sick leave, (2) accumulated comp time, and (3) accumulated vacation time in that order. If a determination is subsequently made by the City that the injury was job related all sick leave, comp time and vacation time used to cover the leave will be credited back to the employee in an amount up to the worker's compensation determination. The amount of compensation from the City may need to be offset by payments received from workers compensation. At no time shall the employee receive compensation and workers compensation payment in excess of their normal pay. Employees with insufficient time off credited to them will be coded on payroll as absent without pay. Extended leave is defined two weeks or more of consecutive time off due to illness or injury.

7.03 BEREAVEMENT LEAVE

Unit members shall, per occurrence, be allowed time off with pay in the event of a death in the family. Up to three (3) days of such leave shall be allowed where the death and service are within the State of California, and up to five (5) days where the death or service is outside the State. Usage of this leave shall not be charged against the employee's sick leave or vacation. Bereavement leave longer than the applicable allotment, or for an individual outside of an employee's family, may be charged to the employee's vacation or sick leave as applicable. This leave will not affect the twenty-five (25%) percent or fifty (50%) percent cashout of sick leave for the same calendar year. An employee who wishes to take excess bereavement leave must obtain approval from a supervisor or the appropriate department designee.

7.04 RELEASE TIME

7.04.01 The AFSCME President, Steward, or designee shall be allowed release time with pay on an as-needed basis to participate in meetings related to employee discipline as set forth in Rules 14, 15, and 16 of the City of Morgan Hill Personnel Rules and Regulations. This includes meetings with City management which may lead to discipline of an employee, when the employee has requested representation by AFSCME and the employee has a legal right to be represented. No notation is required on the AFSCME President, Steward, or designee's timecard when using release time for the purposes described in this section.

7.04.02 A total of up to 40 hours each fiscal year of release time with pay may be used by the AFSCME President, Steward, or designee for the following purposes when representation is requested by the employee and the employee has a legal right to be represented:

- a. Preparation for pre-disciplinary or disciplinary meetings
- b. Processing formal grievances in accordance with the formal grievance procedure set forth in Section 10.21A-G, and sections 10.22 - 32 of this MOU.
- c. Meeting with employees regarding informal grievances, and presenting informal grievance issues to City management.
- d. The 40 hours of release time are cumulative: the AFSCME President, Steward, or designee together are allowed a total of 40 hours under this provision. The AFSCME President, Steward, or designee shall note "Release Time" on their timecard when using release time for the purposes described in this section.

7.04.03 The AFSCME President, Steward, or designee shall be allowed release time with pay on an as-needed basis to participate in City-initiated meetings to discuss issues within the scope of representation. No notation is required on the AFSCME President, Steward, or designee's timecard when using release time for the purpose described in this section.

- 7.04.04 The AFSCME President, Steward, or designee shall first obtain permission from his or her supervisor or other appropriate management personnel before using release time. This is required regardless of the purpose for which release time is needed. Permission to use release time may be delayed in circumstances when City work would be seriously compromised by the AFSCME President, Steward or designee stopping work, however, permission will be granted within a reasonable time frame.
- 7.04.05 AFSCME general membership meetings will continue to be held during lunch or after work.
- 7.04.06 The City shall provide release time for three unit employees for attendance at formal meet and confer sessions.

7.05 VACATION

7.05.01 Vacation Accrual shall be as follows:

- a. Eighty (80) hours per year from the date of hire through the second (2nd) year of employment.
- b. Eighty-eight (88) hours vacation during the third (3rd) year of employment.
- c. One Hundred and four (104) hours vacation during the fourth (4th) year of employment.
- d. One Hundred and twelve (112) hours vacation during the fifth (5th) year of employment.
- e. One hundred and twenty (120) hours vacation during the sixth (6th) year of employment.
- f. One hundred and twenty-eight (128) hours vacation during the seventh (7th) year of employment.
- g. One hundred and thirty-six (136) hours vacation during the eighth (8th) year of employment.
- h. One hundred and forty-four (144) hours vacation during the ninth (9th) year of employment.
- i. One hundred and fifty-two (152) hours vacation during the tenth (10th) year of employment.
- j. One hundred and sixty (160) hours vacation after the tenth (10th) year of service.

Employees who are in their 6th or 7th year of employment effective July 1, 2005 will continue to receive their current allotment of 136 hours until they begin their 8th year of

employment.

Maximum accumulation of vacation shall be no more than that earned for two years. This vacation accumulation maximum shall be enforceable on June 30th of each year. Employees may exceed the maximum prior to June 30th. Any employee who has more than two years annual accrual on the books on July 1st shall not accrue additional vacation until vacation usage drops below the two years allowable accrual.

- 7.05.02 The City guarantees during the term of the contract, that no employee will lose vacation accrued if the employee follows departmental guidelines for requesting time off.
- 7.05.03 Employees who have vacation or compensatory time off at least equal to two weeks shall have the option, once per fiscal year, of receiving pay in lieu of time off for one week of the accrued time.
- 7.05.04 Employees may use up to 24 hours of compensatory time when ill or to attend a medical/dental appointment. All other time missed in a fiscal year due to illness or medical/dental appointments requires the use of sick leave. If the employee does not have sick leave, and is not on an approved extended leave, then the employee must take that time off without pay. Vacation or compensatory time will not substitute for sick leave when the employee calls in sick or must attend a medical/dental appointment the same day they were scheduled to work, with the exception of 24 hours of compensatory time per fiscal year as noted above. Per Section 7.14, employees may use 16 hours of personal time, which is charged to sick leave, for unforeseen appointments and unexpected absences.

ARTICLE VIII. — MISCELLANEOUS BENEFITS

- 8.01 The City will continue to offer the PERS 2% at 55 retirement program for the Unit through June 17, 2006. All present options will be continued. The City will continue to report the value of employer paid member contributions to CalPERS as additional compensation.
- 8.02 Effective June 18, 2006 the City will offer the PERS 2.5% @ 55 retirement program for the Unit. AFSCME members will pay the additional 1% employee contribution rate for the 2.5% @ 55 retirement program. Should the employer contribution rate increase above the 14.753% as stated in the CalPERS Actuarial Statement dated June 14, 2005, AFSCME members will pay 25% of the increase. Should the employer contribution rate decrease below 14.753%, the City and AFSCME agree to meet to determine how the decrease will be allocated for future retirement expenses.
- 8.03 Effective with the pay period beginning on June 22, 2003, the City will match an employee's contribution to a 457 deferred compensation plan up to a maximum of \$12.00 per pay period.
- 8.04 For the term of this agreement, the City will maintain a life insurance program for each employee represented by the Union in the amount of \$50,000. This amount will be paid to the employee's beneficiary upon the death of the employee as outlined in the program

documents. The City will continue to pay 100 percent of the cost involved with this program. Additional life insurance may be purchased by employees through the flexible benefits plan.

- 8.05 For the term of this agreement, the City will maintain a long term disability program on all employees represented by this Union. The amount of monthly coverage for the long term disability will be 66 2/3% of the first \$6,000 of the employee's monthly earnings, or a maximum benefit paid of \$4,000 per month, reduced by any deductive benefits. The maximum benefit period is to age 65 or twelve months, whichever is longer. The elimination period is the sixty days of total disability. Employees may be eligible for some benefits for partial disability as outlined in the plan documents. The City will continue to pay 100% of the costs involved with this program.
- 8.06 For the terms of this agreement, the City will maintain a short term disability program on all employees represented by this Union. The coverage for the short term disability program will be \$360.00 per week with a duration of 8 weeks and the elimination period of 8 days. Employee must be totally disabled to qualify for benefits. Per Plan requirements, maternity benefits are included in the short-term disability coverage. The City will continue to pay 100 percent of the costs involved with this program.
- 8.07 The City agrees to provide Hepatitis-B shots for those employees represented by this Union and who hold the classifications of Utility Worker I, Utility Worker II, Senior Utility Worker, Maintenance Worker I, Maintenance Worker II, Senior Maintenance Worker, Groundskeeper, Electrician, Public Works Inspector, Senior Public Works Inspector, Public Works Inspection Supervisor, Water Quality Specialist, Code Enforcement Officer, Housing Rehabilitation Coordinator, Utility Supervisor and Maintenance Supervisor.
- 8.07.01 If the employee selects a medical plan which provides this benefit then employees in these classifications must get the shots through their medical plan.
- 8.07.02 If not covered by their group medical plan, employees wishing to receive the Hepatitis-B shots must submit a written request to the Human Resources Office. The Human Resources Office will contact the medical office currently being used for City medical examinations to set up the first appointment.
- 8.07.03 Charges for Hepatitis-B shots for these employees pursuant to this section will be paid by the City.
- 8.08 The City and AFSCME will split the printing cost of the Agreement equally. The union will choose the printer.

ARTICLE IX. — MISCELLANEOUS POLICIES AND PROCEDURES

- 9.01 WORK STOPPAGE, ANY JOB ACTION, SLOWDOWN
- 9.01.01 During the life of this Agreement no WORK STOPPAGE, strikes, or picketing shall be caused or sanctioned by the Union, and no lockouts shall be made by the City of Morgan Hill.

- 9.01.02 In the event that any employee covered by this Agreement, individually or collectively, violates the provisions of this article and the Union fails to exercise good faith in halting the work interruption, the Union and the employees involved shall be deemed in violation of this article and the City shall be entitled to seek all remedies available to it under applicable law.

9.02 LIGHT DUTY DETERMINATION

- 9.02.01 In the event an employee is injured and off the job for ten (10) working days or more, and may be able to return to work but not able to perform all her/his normal job duty assignments, a temporary "light duty" assignment may be made by the City. To be eligible for such a modified assignment, the City may require the employee to provide the Human Resources Office with a medical statement from his/her treating physician that clearly states the medical limitations and abilities of the employee. The City may require a second or third doctor's determination at City expense. All light duty work requests shall be coordinated through the Human Resources Office.
- 9.02.02 An employee receiving such a light duty determination could be reassigned to another assignment or other reduced work schedule up to a forty hour work week upon the determination of the Department Director. Once the employee is certified by their treating physician or City doctor as no longer in need of light duty, they will be reassigned to their normal work assignment.

9.03 SUBSTANCE ABUSE POLICY

- 9.03.01 The City's Substance Abuse Policy shall continue in effect for the term of this agreement.

9.04 CLASS A LICENSE

All Utility Worker and Maintenance Worker employees are required to maintain a Class "A" license. Pursuant to the Department of Transportation regulations, such employees are subject to the Department of Transportation Drug Policy. A copy of the Policy as agreed to by the City and Union, is attached (Exhibit E).

9.05 CITYWIDE SAFETY COMMITTEE

The City and the Union shall maintain a Citywide Safety Committee with each appointing two members. The Committee shall meet at least quarterly and shall review all accident reports and make recommendations thereon, review departmental safety programs and make recommendations thereon, and assist in planning and presenting safety programs. Responsibility for and authority over safety continues to be vested in the City Management.

9.06 LAY OFF PROCEDURE

9.06.01 The City Council may abolish any position in the Classified Service due to lack of funds, work or need.

9.06.02 The layoff of employees resulting from the elimination of positions shall be governed by the following procedure:

- a. Layoffs shall be made from within the affected job classification in reverse order of total time in that classification, including any period of probation, paid leave or active military leave. Except as regards to military leave, no service credits shall be earned during any leave of absence without pay in excess of thirty (30) days. Where time in class is equal between two (2) or more affected employees, the order of layoff shall be determined by the following means, in order: 1) placement on the eligibility list at time of hire in the class with the highest ranking employee(s) being determined to have more time in service, if the list (or reasonable evidence of the list) is available; 2) total service time in the Classified Service; 3) if neither 1) or 2) above breaks the tie(s), seniority will be determined by an appropriate random means of selection (lot, coin flip, etc.).
- b. The order of layoff in the affected classification or classifications shall be:
 - i. Temporary employees.
 - ii. Probationary employees.
 - iii. Regular employees.

The treatment of personnel employed by means of State or Federal grant monies shall be in accordance with regulations for retention as established by the grantor. In the absence of such regulations, the type of position (Classified or Exempt) shall govern treatment of such personnel.

- c. Probationary and regular employees in the Classified Service who, under subparagraph B above, are scheduled to be laid off shall receive at least a twenty-one (21) days written notice to this effect.

9.06.03 In lieu of layoff, an employee may elect transfer or demotion to a vacant position in the Classified Service which the City intends to fill and for which the employee is qualified. Such actions shall be governed by the terms of Rules 13.03 and 13.04, and in no event shall result in an employee being placed in a classification carrying a higher maximum rate of pay. If two (2) or more employees have requested transfer or demotion to the same vacant position and the City has determined they are both qualified to fill it, the more senior employee shall receive preference. For purposes of this section, total time in the Classified Service shall be utilized in determining seniority.

9.06.04 Within ten (10) days from the date layoff notices are issued, an employee who would otherwise be laid off may elect to displace an employee in a classification carrying a

lower or the same maximum rate of pay; provided, however, that the displacing employee must have held regular status in such classification and have greater time in the classification and directly related higher classifications combined than the employee being displaced. (For example, related classifications would mean Utility Worker I, Utility Worker II, Senior Utility Worker; etc.)

9.06.05 A probationary or regular employee displaced in accordance with this paragraph shall, in turn, be provided the same notice and “bumping” privilege as set forth in this paragraph.

9.06.06 Regular and probationary personnel laid off in accordance with this Rule shall, unless they request otherwise, be placed on a re-employment list for three years. If an employee is re-employed from such a list, all service credits and sick leave accrued to the date of layoff shall be restored. In no event, however, shall the City be required to restore credits for vacation and sick leave paid out at the time of layoff.

9.06.07 At the time of layoff, the employee’s name shall be removed from all promotional eligible lists, but, at the employee’s request, shall be retained on open-competitive Lists subject to the provisions of Rule 10.05 of these Regulations. If the employee is re-employed prior to the expiration of a promotional list, they shall be reinstated to the list.

9.06.08 Prior to the effective date of layoff, the Department Director shall furnish the Personnel Officer a final evaluation of the employee’s performance.

9.07 IRS 125 PROGRAM

The City shall maintain in effect the IRS-125 Program.

9.08 WORK FURLOUGH

The City shall annually implement an end of year furlough that includes the time period of December 24 through January 1st of each year. The specific furlough dates and staffing requirements shall be determined by the City. Furlough dates shall be provided to AFSCME by November 1st of each year, and staffing requirements shall be finalized and published by December 1st of each year.

ARTICLE X. — GRIEVANCE PROCEDURE

10.01 The following grievance procedure will be in effect:

10.02 A grievance is defined as any dispute involving the interpretation, application or alleged violation of:

10.02.01 A current Memorandum of Understanding between the City and a recognized employee organization.

10.02.02 The City's Personnel Ordinance and these Rules where the provision in dispute is within the scope of representation.

10.03 Should any dispute concern an agreement, rule or action which prescribes a separate appeal procedure, that dispute shall be excluded from the procedure contained herein.

10.04 INFORMAL AND FORMAL GRIEVANCES

10.04.01 Step 1. An employee who has a grievance shall bring it to the attention of his immediate supervisor within five (5) working days of the occurrence of the act which is the basis for the dispute. If the employee and the immediate supervisor are unable to resolve the grievance within five (5) working days of the date it is raised with the immediate supervisor, the employee shall have the right to submit a formal grievance which shall contain the following information:

- a. The name of the grievant.
- b. The grievant's department and specific work site.
- c. The name of the grievant's immediate supervisor.
- d. A statement of the nature of the grievance including the date and place of occurrence.
- e. The specific provision, policy or procedure alleged to have been violated.
- f. The remedies sought by the grievant.
- g. The name of the individual or organization, if any, designated by the grievant to represent him/her in the processing of the grievance. However, in no event, shall an employee organization other than the one which formally represents the position occupied by the grievant be designated as the grievant's representative.

10.04.02 Step 2. An employee dissatisfied with the decision of the immediate supervisor in Step 1 may submit the grievance to his Department Head within seven (7) working days from the date of the immediate supervisor's decision. The Department Head shall respond to the grievance in writing within seven (7) working days from the date of its receipt.

10.04.03 Step 3. If the employee is dissatisfied with the decision of the Department Head in Step 2, he may submit the grievance to the appointing authority within ten (10) working days from receipt of the Department Head's response. The appointing authority or his designated representative shall respond to the grievance in writing within the ten (10) working days of its receipt. Within this period the appointing authority, at his discretion, may conduct an informal hearing involving the parties to the dispute.

- 10.04.04 Step 4. If the employee is dissatisfied with the decision of the appointing authority, he may submit the grievance to an Employee Relations Panel as provided in Part C, listed below. Notice of such appeal must be filed in writing by the employee with the appointing authority within fifteen (15) working days of receipt of that official's decision.

10.05 EMPLOYEE RELATIONS PANEL

- 10.05.01 The Employee Relations Panel shall consist of three (3) members selected as follows:

- a. A City Management official selected by the appointing authority.
- b. A City employee selected by the grievant; provided, however, that the participation of the employee so selected shall not constitute a conflict of interest nor subject that employee to any recriminations as a result of his/her participation.
- c. A representative of the California State Mediation and Conciliation Service, who shall serve as chairperson. An individual, other than a State Representative, chosen by the parties shall be knowledgeable in public sector labor relations and may be chosen from any source reasonably likely to produce such an individual, including but not limited to a labor organization or management organization.
 - i. The Chairperson shall serve without compensation unless it can be demonstrated that the individual was obliged to use accrued leave benefits or leave without pay to serve on the Panel. Where provided compensation paid shall be shared by the City and the grievant, or his employee organization.
 - ii. The Panel shall be constituted and hear the grievance within thirty (30) working days from the filing of the appeal with the appointing authority. The Panel's decision shall be rendered within fifteen (15) working days from the conclusion of the hearing. The majority decision of the panel shall be final and binding, subject only to ratification by the City Council if said decision mandates a capital expenditure or significant, unbudgeted expenditures. In those instances the ruling shall be submitted to the City Council for action which may include modification or reversal.

- 10.05.02 The conduct of the Panel's hearing shall be governed by the following ground rules.

- a. All hearings shall be convened during regular established City hours to the extent feasible. The grievant, and City employees serving on the Panel or whose participation in the hearing is required by the Panel, shall not suffer loss of wages for time devoted to this purpose during other than the employee's regularly scheduled work period, no compensation shall be provided.

- b. All hearings shall be conducted in an expeditious manner, with the chairperson retaining final authority to rule on procedural matters or on other points affecting the length and conduct of the hearing. Legal counsel, court reporters and briefs shall only be utilized upon agreement between the City and the grievant and shall not serve to delay the Panel's decision beyond the prescribed time limit, except by mutual agreement.
- c. The Panel shall be committed to resolving the grievance in an objective, timely and equitable fashion and shall not permit either party to engage in any presentation or line of an argument which detracts from this purpose. Moreover, the Panel shall not accept evidence not presented in Step 3 of this procedure.
- d. No hearing shall be convened unless both parties have stipulated in writing to the issue or issues to be heard by the panel.

10.06 GENERAL CONDITIONS

Any time limit set forth in B or C of this procedure may be extended by written agreement between the City and the grievant or the recognized employee organization representing the grievant.

- a. Failure on the part of the grievant or their designated representative to comply with the time limits of this procedure or any extension thereto shall constitute a withdrawal of the grievance without further recourse to re-submittal under this procedure. Failure on the part of the City to comply with prescribed time limits or extension thereto shall result in the grievance being moved to the next step of the procedure.
- b. The grievant shall be entitled to have a representative of his own choosing, except as provided in Step 1, B-G., present at any grievance meeting with the City.
- c. A representative of a recognized employee organization which represents the grievant's position shall be entitled to be present at any hearing held in conjunction with Step 3 and Step 4 of this procedure.
- d. The City Manager or his designated representative shall serve as the central repository for all grievance records.

ARTICLE XI. – MISCELLANEOUS

- 11.01 During the first year of this Agreement, the City and Union consent to form a committee whose task shall be to create a program that provides for certain positions within the City's classifications to be designated as "flexibly staffed." Flexibly staffed positions will afford the City the opportunity to increase the capacity of the work force to deliver quality services to citizens and provides City employees with advancement opportunities within their job

classification. Once the program is established, Human Resources shall be responsible for
its oversight.

ARTICLE XII. — RATIFICATION

11.01 This Memorandum of Understanding shall become effective July 1, 2005.

11.02 No earlier than March 4, 2008, and no later than March 6, 2008, the Union shall provide the City with its written requests on terms within the scope of representation for the period beginning July 1, 2008. The City and the Union shall begin to meet and confer on or before April 1, 2008.

FOR THE CITY OF MORGAN HILL

FOR AFSCME, LOCAL 101

J. Edward Tewes
City Manager

Date

Pam Borzone President	Date
--------------------------	------

Mary Kaye Fisher
Human Resources Director

Steve Pendleton
Vice President

Joni Evans	Date
Administrative Analyst	

Clint Byrum _____ Date _____
 Secretary/Treasurer

Mori Struve
Deputy Director of Public Works

Mario Jimenez	Date
Negotiation Unit Member	

Mike Ferrero
Business Agent

AFSCME, LOCAL 101
EDUCATIONAL INCENTIVE PAY PROGRAM
Effective: July 2, 1995

I. INTRODUCTION

Educational Incentive Pay (EIP) shall be paid in addition to regular pay when education is in addition to the regular requirements of their job as stated in the City's adopted job descriptions and said education is job-related. An employee may not receive more than a seven-and-one-half (7.5%) percent increase above the employee's base monthly salary.

II. PROGRAM GOALS

The goals of this program are:

- A. To encourage employees to pursue education and programs which would enhance their job performance and understanding.
- B. To prepare employees for possible promotions to other positions or future openings within the City.
- C. To reward employees for their own initiative demonstrated through their participation in this program.

Any evaluation or decision regarding this program or an employee's participation in the program will be made based on the intent of the above stated goals.

III. DEFINITIONS

- A. "Job-Related" - A course or training program that directly relates to or enhances the employee's ability to perform the duties of their classification.
- B. "Degree Program" - A series of college level courses that when completed results in an Associate of Arts, Associate of Science, Bachelor of Arts, Bachelor of Science, Master of Arts, or Master of Science degree. Courses that qualify for a degree program are those courses identified by the college or university that count toward the specific degree program the employee has selected.
- C. "Requalification" - The annual process that an employee must complete in order to continue receiving educational incentive pay for the following fiscal year.

- D. "Minimum job requirements" - The minimum job qualifications listed on the job description for each job classification.

IV. RATES OF PAY FOR EDUCATION ABOVE STATED JOB REQUIREMENTS

- A. For classifications that have a minimum education requirement of high school diploma or the equivalent (GED), the following steps are available for attainment of up to 7.5% EIP:
- (1) 1.25% = 15 recognized semester college units, 240 hours of job-related training, or the equivalent.
 - (2) 1.25% = 30 recognized semester college units, 480 hours of job-related training, or the equivalent.
 - (3) 1.25% = 45 recognized semester college units, 720 hours of job-related training, or the equivalent.
 - (4) 1.25% = 60 recognized semester college units, 960 hours of job-related training, attainment of an Associate of Arts degree or Associate of Science degree, or the equivalent.
 - (5) 1.25% = 90 recognized semester college units, 1440 hours of job-related training, or the equivalent.
 - (6) 1.25% = 120 recognized semester college units, 1920 hours of job-related training, attainment of a Bachelors of Arts degree or Bachelors of Science degree, or the equivalent.
- B. For classifications that have a minimum education requirement of an Associate of Arts or Associate of Science degree or two years of job-related college course work, the following steps are available for attainment of up to 7.5% EIP:
- (1) 1.25% = 15 recognized semester college units toward attainment of a Bachelor's degree, 240 hours of job-related education or training, or the equivalent.
 - (2) 1.25% = 30 recognized semester college units toward attainment of a Bachelor's degree, 480 hours of job-related education or training, or the equivalent.
 - (3) 1.25% = Attainment of a Bachelor of Arts or Bachelor of Science degree, 960 hours of job-related education or training, or the equivalent.
 - (4) 1.25% = Following attainment of a Bachelor's degree, 15 recognized semester units that qualify toward attainment of a Master of Arts or Master of Science degree, or the equivalent.
 - (5) 1.25% = Attainment of a Master of Arts or Master of Science degree or the equivalent.
 - (6) 1.25% = Following attainment of a Bachelor's degree or Master's degree, an additional 240 hours of job-related education or training.

- C. For classifications that have a minimum education requirement of a Bachelor of Arts or Bachelor of Science degree, the following steps are available for attainment of up to 7.5% EIP:
- (1) 1.25% = 15 recognized semester units that qualify toward attainment of a Master of Arts or Master of Science degree, or the equivalent.
 - (2) 1.25% = Attainment of a Master of Arts or Master of Science degree or the equivalent.
 - (3) 1.25% = Following attainment of a Bachelor's degree or Master's degree, an additional 240 hours of job-related education or training, or the equivalent.
 - (4) 1.25% = Following attainment of a Bachelor's degree or Master's degree, 480 hours of job-related education or training, or the equivalent.
 - (5) 1.25% = Following attainment of a Master's degree, 720 hours of job-related education or training, or the equivalent.
 - (6) 1.25% = Following attainment of a Bachelor's degree or Master's degree, 960 hours of job-related education or training, or the equivalent.
- D. "Equivalents" are defined in the requalification section of this policy.
- E. Different certificates will qualify towards educational incentive pay based on the certificate's degree of difficulty, hours required for completion and the recommendation of the Department Director. Attachment A lists specific certificates and licenses, and the respective EIP points, that qualify for EIP.

V. REVIEW PROCESS FOR CERTIFICATIONS

The following review process will be used for assessing how a certification, other than a college course, will count towards educational incentive pay:

- A. Where possible, the formula found in the "Equivalents other than college units" section of this article will be used to evaluate the degree to which the certificate counts towards educational incentive pay.
- B. If it is possible to obtain, the Human Resources Director will contact the agency awarding the certificate and request a statement describing the number of preparation and/or course hours needed to obtain the certificate. This statement will then be converted to formula hours.
- C. In the event a determination cannot be made using paragraphs A and B listed above, the employee will make a recommendation to their Department Director and to the AFSCME Organization President or in the absence of the AFSCME President, the Vice-President. This recommendation by the employee shall be in writing and shall include the

degree to which the employee feels the certificate should count towards educational incentive pay and the justification for such.

- D. If these two individuals agree with the employee's recommendation or if they both agree with a modified recommendation, they will present such to the Human Resources Director for final determination.
- E. The Human Resources Director if he/she concurs with the recommendation will see that such certification is counted towards the employee's educational incentive pay.
- F. If the Department Director and AFSCME Organization President cannot agree on a recommendation, the Human Resources Director will with both parties present conduct an informal hearing and allow both individuals to state their recommendation along with appropriate justification. The Human Resources Director may decide to choose one of the recommendations presented or a modification of such. The decision of the Human Resources Director will be final.
- G. If both the Department Director and the AFSCME Organization President agree on a recommendation which the Human Resources Director cannot endorse, the Human Resources Director will explain his/her justifications and attempt to get the parties to modify their recommendation. If agreement cannot be reached the issue will be presented to the City Manager for determination.
- H. If the employee is not satisfied with the decision of the City Manager, the employee may file a grievance pursuant to the grievance procedure contained in the AFSCME MOU. The grievance will be advanced to the final step in the grievance process given that the City Manager review has already taken place.

VI. PROGRAM QUALIFICATIONS AND GUIDELINES

The following qualifications and guidelines exist to help administer this program:

- A. An employee must have completed their initial probation before being eligible for his program. Employees on probationary status as a result of promotions shall be deemed eligible under this plan.
- B. The employee must demonstrate that the course or degree being sought and being considered for EIP pay will be directly related towards enhancing the employee's present job skills or future promotional opportunities within the City. The Human Resources Director will make this determination after discussions with the employee and the Department Director. The burden of proof as to job relatedness of specific educational

levels shall be upon employee. In addition, courses required as part of a degree program will also be considered.

- C. Employees should contact their Department Director prior to enrollment in a course or class to receive confirmation that such a class would qualify for this program. The Department Director will contact the Human Resources Office to receive confirmation that a specific course or certification qualifies for EIP.
- D. Upon Department Director approval, the City will make every effort to reasonably accommodate employee course schedules provided employee workload, overtime budgets, etc. are not adversely impacted.
- E. All attendance and participation in this program will be on the employee's own time and at their own expense.
- F. The tuition reimbursement program is a separate benefit contained in the MOU and employee's may have the option of using the tuition reimbursement program towards the attainment of their education or professional development goals. Use of the tuition reimbursement program by the employee will not violate any provisions of this article.
- G. To qualify for this program, the employee must complete the course(es) with a passing grade of "C" or better. If grades are not assigned then the employee must provide other written certification which demonstrates that the employee has successfully passed course or obtained certification.
- H. Payment of educational incentive pay will be effective on the first day of the payroll period following the date of the college degree, course certification, etc., provided the employee has made a timely request to the Human Resources Director for such pay. In no circumstances will payroll periods be split to match the exact date appearing on the degree or certificate.
- I. Educational incentive pay is based upon education which is in addition to the regular requirements of the job as stated on the City's adopted job description. (Please refer to each specific job description for the minimum educational requirements.) These educational requirements are used as the starting point for EIP calculations.

VII. DOCUMENTATION OF EDUCATIONAL ACHIEVEMENT

- A. The City will provide an educational incentive pay program form to be kept in the employee's personnel file to track the employee's participation in this program.

- B. Evidence of successful completion of a degree, course or certificate shall consist of a diploma or certificate indicating the major field of study along with a copy of college transcripts.
- C. The employee is responsible to furnish in a timely fashion all necessary documentation.

VIII. TERMINATION OF EDUCATIONAL INCENTIVE PAY

- A. Educational Incentive Pay shall be terminated at such time as the employee receiving educational incentive pay is promoted to or otherwise placed in a position requiring the educational level which the employee possesses or a higher educational level.
- B. In cases where a promotion would cause an employee to lose their Educational Incentive Pay due to a reclassification, the employee will receive a new base salary equal to or greater than an amount five (5%) percent above their old base salary and Educational Incentive Pay total.
- C. Educational incentive pay will also be terminated when an employee fails to requalify as per the guidelines outlined in this policy.
- D. Once an employee fails to requalify, they will lose their educational incentive pay until such time as they have completed the outlined requalification requirements. At such time, the employee will then be able to return to the educational incentive pay level they enjoyed before they failed to requalify.

IX. REQUALIFICATION PROCESS

Requalification for continued receipt of educational incentive pay shall be training sessions provided by the City during each year of the contract as identified by the Human Resources Director.

X. EMPLOYEES PREVIOUSLY ON LONGEVITY

- A. Effective October 1, 1989, the City's Longevity Pay Program will be replaced entirely with a special Educational Incentive Program (EIP) for only those employees still on the Longevity Pay Program as of that date. The terms of this special program will be as follows:
- B. All eligible employees shall be converted to the special EIP program at the same pay as they enjoyed under the Longevity Pay Program. No employee will be allowed to begin receiving longevity pay who is not already receiving such pay prior to October 1, 1989. This special educational incentive program assumes that these employees will continue to requalify under the City's existing EIP program guidelines for continued receipt of EIP pay.

- C. An employee previously on the longevity pay program may use this special EIP program or they may convert at any time they choose to the regular EIP program outlined in this article. This is a one-way conversion. Once an employee elects the regular EIP Program, he/she may not return to this special EIP Program.
- D. Employees covered under the previous longevity program may advance on their anniversary date to the various pay levels of five (5%) percent after ten years service, seven-and-one-half (7.5%) percent after fifteen years of service, and ten (10%) percent after twenty years of service. Advancement is based upon the assumption that these employees will continue to requalify under the City's existing EIP program guidelines for continued receipt of EIP pay.
- E. Once an employee fails to requalify, they will lose their educational incentive pay until such time as they have completed the outlined requalification requirements. At such time, the employee will then be able to return to the educational incentive pay level they enjoyed before they failed to requalify.
- F. Employees previously on the City longevity program who do not wish to continue to requalify annually may make a one-time decision to freeze their percentage benefit at its current rate.

**Attachment A of AFSCME
Educational Incentive Pay Program
List of Qualifying Certificates and Point Values**

EIP Point Equivalency

ISSUING ORGANIZATION	CERTIFICATE NAME	GRADE NO.	EIP POINT VALUE
State of California	Water Treatment Operator	I - V	6 points
AWWA	Water Distribution Operator	I - IV	3 points
AWWA	Backflow Prevention Tester	n/a	40 hours = 2.5 points
AWWA	Backflow Prevention Specialist	n/a	40 hours = 2.5 points
AWWA	Cross Connection Specialist	n/a	40 hours = 2.5 points
CWEA	Collection System Maintenance	I - IV	6 points
CWEA	Mechanical Technologist	I - IV	6 points
CWEA	Electrical/Instrumentation Technologist	I - IV	3 points
CSUS Homestudy Program	Operation and Maintenance of Wastewater Collection Systems Vol. 1	n/a	6 points
CSUS Homestudy Program	Operation and Maintenance of Wastewater Collection Systems Vol. 2	n/a	6 points
CSUS Homestudy Program	Water Treatment Plant Operation Vol. 1	n/a	6 points
CSUS Homestudy Program	Water Treatment Plant Operation Vol. 2	n/a	6 points
CSUS Homestudy Program	Small Water System Operation and Maintenance	n/a	3 points
CSUS Homestudy Program	Water Distribution System Operation and Maintenance	n/a	3 points
State of California	Qualified Applicators License	B	6 points

ISSUING ORGANIZATION	CERTIFICATE NAME	GRADE NO.	EIP POINT VALUE
State of California	Class A Driver's License Renewal (can only be used for annual requalification process)	n/a	1 point
American Red Cross or other certified org.	CPR/First Aid Certification (can only be used for annual requalification process)	n/a	8 hours = .5 points
<i>The following EIP point values are based on the analysis below.</i>			
State of California	Real Estate Salesperson License	n/a	10 points
State of California	Real Estate Broker License	n/a	25 points
State of California	Notary Public	n/a	3.5 points
State of California	General Contractors License	n/a	up to 4.5 points
IIMC	Certified Municipal Clerk	n/a	up to 38.75 EIP points
ICBO	Plans Examiner	n/a	4 points
ICBO	Building Inspector	n/a	4 points
ICBO	Electrical Inspector	n/a	4 points
ICBO	Building Code Accessibility/Usability Specialist	n/a	4 points
ICBO	Housing Inspector	n/a	4 points
ICBO	Zoning Inspector	n/a	4 points
ICBO	Mechanical Inspector	n/a	4 points
ICBO	Plumbing Inspector	n/a	4 points
ICBO	Combination Inspector	n/a	4 points
ICBO	Combination Dwelling Inspector	n/a	4 points
ICBO	Light Commercial Combination Inspector	n/a	4 points
ICBO	Elevator Inspector	n/a	4 points

ISSUING ORGANIZATION	CERTIFICATE NAME	GRADE NO.	EIP POINT VALUE
ICBO	Special Inspector	n/a	4 points
CABO	One and Two Family Dwelling Inspector	n/a	4 points
State of California	Engineer in Training	n/a	7.5 points
State of California	Professional Engineer	n/a	12 points
State of California	Land Surveyor in Training	n/a	7.5 points
State of California	Land Surveyor	n/a	10.5 points

RATIONALE FOR ASSIGNING POINT VALUES

In general, certification/license requirements were equated to college units by using our standard formula of 3 college semester units = 48 hours of class time = 3 EIP points. None of the organizations listed above offered standard Continuing Professional Education (CPE) credits for the certifications/licenses, however, employees may take preparatory courses at institutions which do offer CPE credits. If such credits are offered, they count toward EIP, with 1 CPE credit being equal to 1 college semester unit.

EIP credit may also be given for home study which is *not* related to a preparatory class, provided that the employee keeps a detailed written log showing the hours of study and the specific topics studied.

For certifications which accept college courses or degrees in lieu of experience, employees will receive credit for the courses/degree under Section IV of the EIP Program.

Real Estate License

The State of California offers two real estate licenses which might be obtained by City employees to benefit their job: a Real Estate Salesperson License, and a Real Estate Broker License. The requirements for each license are outlined below.

Real Estate Salesperson License	EIP Points	Real Estate Broker License	EIP Points
Must be 18 years old	0	Must be 18 years old	0
Must complete 1 3-semester unit course on Real Estate Principles, and 2 additional 3-unit courses within 18 months of receiving the license (9 semester units total required)	9 college units = 9 EIP points	Must take 8 3-unit classes and have two years of full-time licensed real estate sales person experience or a 4-year degree	24 college units = 24 EIP points
Pass Real Estate Salesperson exam	1	Pass Real Estate Broker exam	1
TOTAL POINTS	10	TOTAL POINTS	25

Note: Annual education required to maintain Real Estate licenses can be used toward EIP requalification, but do not count toward additional EIP percentage increases.

Notary Public

The requirements for becoming a Notary Public in the State of California are outlined below.

Notary License	EIP Points
Must be 18 years old, legal resident	0
Certified home study, up to 32 hours	up to 2
Optional 8-hour preparatory class for the exam	.5
Pass Notary exam	1
TOTAL POSSIBLE POINTS	up to 3.5

Note: Training required to maintain a Notary License can be used toward EIP requalification, but does not count toward additional EIP percentage increases.

General Contractors License

The requirements for obtaining a General Contractors License in the State of California are outlined below.

General Contractors License	EIP Points
Must have 4 years of experience at the journey level (or a BS degree and 1 year of experience)	0
Certified home study, up to 32 hours	up to 2
Optional 24-hour preparatory class for the exam	24 hours = 1.5 EIP points
Pass General Contractors exam	1
TOTAL POSSIBLE POINTS	up to 4.5

Certified Municipal Clerk

The process for becoming a Certified Municipal Clerk varies considerably depending on the work experience and educational level of the applicant. This table summarizes the primary ways individuals become a Certified Municipal Clerk and assigns EIP points for individuals working on this certification. A copy of the IIMC application for certification is available for review.

Certified Municipal Clerk	EIP Points
Must be a City or Deputy City Clerk, a 3-year member of IIMC, accept the IIMC Code of Ethics, submit an application form, and have a letter from a Clerk sponsor	0
<i>Educational Requirements:</i> Must attend a 100-hour Clerks Institute, have a BA degree in Public Administration or a related field, or have an AA in Public Administration and 67 of Clerks Institute training	100 hours = 6.25 EIP points
<i>Experience Requirements:</i> Must obtain 50 IIMC points based on a combination of work experience, Municipal Clerks Conferences, and relevant college/university course credits not included in educational qualifications.	Depends on method of meeting the requirement
Up to 40 IIMC points for work experience: 4 points per year for a full-time Municipal or Deputy Clerk with administrative responsibility	0 EIP points for work experience
Up to 20 IIMC points for attending IIMC Conferences (1 IIMC point per 6-hour day; total 120 hours) Up to 25 IIMC points for college course credits, 1 pt=1 course hour	up to 7.5 EIP points for 120 hours at conferences 25 college credits = 25 EIP points
TOTAL POSSIBLE POINTS	up to 38.75

ICBO and CABO Certifications

The International Conference of Building Officials (ICBO) and the California Association of Building Officials (CABO) offer a number of different certifications (Plans Examiner, Building Inspector, Plumbing Inspector etc.) useful for the professional development in certain fields. The certification process for each of the certificates list above is the same, and is summarized below.

ICBO/CABO Certificates	EIP Points
Certified home study, up to 32 hours	up to 2
Optional 8-hour exam preparation class	8 hours = .5 EIP points
Pass ICBO/CABO exam	1.5
TOTAL POSSIBLE POINTS	up to 4

Note: *Training required to maintain ICBO/CABO certificates can be used toward EIP requalification, but does not count toward additional EIP percentage increases.*

Engineer-in-Training

The requirements to obtain an Engineer-in-Training certificate are outlined in the California Business and Professions Code, and are summarized below.

Engineer-in-Training Certificate	EIP Points
Three years of engineering experience <i>or</i> 3 years of college education (90 units) in an engineering curriculum	0 EIP points for experience
Certified home study, up to 48 hours	up to 3
Optional 42-hour exam preparation class	42 hours = 3 EIP points
Pass EIT exam	3
TOTAL POSSIBLE POINTS	up to 9 EIP points

Professional Engineer

The requirements to obtain a Professional Engineer certificate are outlined in the California Business and Professions Code, and are summarized below.

Professional Engineer Certificate	EIP Points
Six years of engineering experience <i>or</i> 4-year college degree in an engineering curriculum plus two years of experience	0 EIP points for experience
Certified home study, up to 96 hours	up to 6
Optional 42-hour exam preparation class	42 hours = 3 EIP points
Pass PE exam	6
TOTAL POSSIBLE POINTS	up to 15 EIP points

Land Surveyor-in-Training

The requirements to obtain a Land Surveyor-in-Training certificate are outlined in the California Business and Professions Code, and are summarized below.

Land Surveyor-in-Training Certificate	EIP Points
Two years of land surveying experience or 2 years post-secondary education in land surveying (60 units)	0 EIP points for experience
Certified home study, up to 48 hours	up to 3
Optional 42-hour exam preparation class	42 hours = 3 EIP points
Pass LSIT exam	3
TOTAL POSSIBLE POINTS	up to 9 EIP points

Land Surveyor

The requirements to obtain a Land Surveyor certificate are outlined in the California Business and Professions Code, and are summarized below.

Land Surveyor Certificate	EIP Points
Six years of engineering experience <i>or</i> 4-year college degree in (120 units) in an engineering curriculum plus two years of experience	0 EIP points for experience
Certified home study, up to 96 hours	up to 6
Optional 42-hour exam preparation class	42 hours = 3 EIP points
Pass Land Surveyor exam	3
TOTAL POSSIBLE POINTS	up to 12 EIP points

**CITY OF MORGAN HILL & AFSCME,
LOCAL 101
DRUG AND ALCOHOL TESTING
PROGRAM
PURSUANT TO THE DEPARTMENT OF
TRANSPORTATION REGULATIONS**

EFFECTIVE DATE: November 3, 1997
REVISED: July 1, 2003

Effective January 1, 1996, the City of Morgan Hill must comply with the United States Department of Transportation regulation implementing the Federal Omnibus Transportation Employee Testing Act (OTETA) of 1991. OTETA requires the City to establish alcohol and drug testing programs to help prevent the misuse of alcohol and drugs by drivers of commercial motor vehicles. Keeping in mind the basic objectives stated in the City of Morgan Hill Policy on Substance Abuse, which went into effect September 26, 1989, the City has established the following alcohol and drug testing procedures and program in compliance with the OTETA, hereafter referred to as "the program".¹

Employees covered by this program are subject to pre-employment, cause, and random testing, and may be subject to post-accident, return-to-duty and unannounced follow-up testing. The testing procedures use an evidential breath test (EBT) device for alcohol testing. For drug testing, urine specimen collection and testing by a laboratory certified by the Department of Health and Human Services is required. If the Medical Review Officer determines that an employee has misused alcohol or drugs in violation of this program, the City will remove the employee from safety-sensitive functions. The employee will not perform safety-sensitive functions until the employee meets the requirements established in this program which may include referral to a substance abuse professional, participation in a rehabilitation program, return-to duty testing, and/or follow-up testing.

DEFINITIONS

Following are the definitions for the Drug and Alcohol Testing Program. This is a list of major definition areas and is not intended to be all inclusive of definition or terms.

WORD/PHRASE	DEFINITION
Adulterated specimen	A specimen that contains a substance that is not expected to be present in human urine, or contains a substance expected to be present but is at a concentration so high that it is not consistent with human urine.
Alcohol	The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohol including methyl and isopropyl alcohol.
Alcohol concentration (or content)	The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test under this part.
Collection Agency	State licensed service provider that follows procedures for the collection of urine samples in a split specimen process for delivery to a toxicological laboratory for testing.

¹This program meets the federal regulatory requirement that the City promulgate policies and procedures on the misuse of alcohol and use of controlled substances. 59 Code of Federal Regulations section 382.60.

WORD/PHRASE	DEFINITION
Collection site	A place where individuals present themselves for the purpose of providing breath or urine samples to be analyzed for specified alcohol or drugs.
Commercial motor vehicle (CMV)	<p>A motor vehicle or combination of motor vehicles used in commerce or transport passengers or property if the motor vehicle:</p> <ol style="list-style-type: none"> 1. Has a gross vehicle weight rating of 26,001 or more pounds; or 2. Has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or 3. Is designed to transport 16 or more passengers including the driver; or 4. Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F).
Controlled substance	Drugs as deemed under this policy include marijuana, cocaine, opiates, amphetamines, phencyclidine (PCP).
DOT	Federal Department of Transportation
Driver	Any person who operates a commercial motor vehicle. This includes, but is not limited to: full time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent, owner-operator contractors who are either directly employed by or under lease to the City or who operate a commercial motor vehicle at the direction of or with the consent of the City. For the purposes of pre-employment/ pre-duty testing only, the term "driver" includes a person applying to the City to drive a commercial motor vehicle.
Drug	Any substance (other than alcohol) that is a controlled substance as defined above and 49 CFR Part 40.
FHWA	The Federal Highway Administration, U.S. Department of Transportation.

WORD/PHRASE	DEFINITION
Owner-Operator (s)	A driver(s) who has been contracted for services with the District. For the purposes of these procedures and the City's Alcohol and Controlled Substances Abuse Policy, owner-operators are not to be considered employees, but will be required to participate in the City's Alcohol and Controlled Substances Abuse Policy like all employee drivers.
Medical Review Officer (MRO)	A licensed physician accredited by the Medical Review Officers' Association National with knowledge and expertise of the clinical and medical diagnosis and treatment of alcohol and drug related disorders.
On duty time	<p>All time from the time a driver begins to work or is required to be in readiness to work until the time the driver is relieved from work and all responsibility for performing work. "On duty time" shall include:</p> <ol style="list-style-type: none"> 1. All time at a City facility or other City property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the City; 2. All time inspecting, servicing, or conditioning any commercial motor vehicle at any time; 3. All driving time; 4. All time, other than driving time, in or upon any commercial motor vehicle; 5. All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; 6. All time spent performing the driver requirements relating to accidents; 7. All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.
Performing (a safety-sensitive function)	A driver is considered to be performing a safety-sensitive function during any period in which the driver is actually performing, ready to perform or immediately available to perform any safety-sensitive functions.

WORD/PHRASE	DEFINITION
Positive Test	A test is only positive and reported to the City when the initial screening test is positive, the confirming test is positive, and the Medical Review Officer has discussed with the employee the results of the two tests and ascertained that the tests are accurate.
Provider	Certified professional/agency contracted to provide services prescribed by this program.
Reasonable suspicion	The City believes the actions or appearance or conduct of a commercial motor vehicle driver who is on duty as defined below, are indicative of the use of alcohol or drugs.
Refusal to submit (to an alcohol or drug test)	A covered employee who (1) fails to arrive at the collection site within a reasonable time, as determined by the employer; (2) refuses to take an alcohol or drug test; (3) fails to provide adequate breath for testing without a valid medical explanation after he/she has received notice of the requirement for breath testing in accordance with FHWA regulations; (4) fails to provide adequate urine for drug testing without a valid medical explanation after he or she has received notice of the requirement for urine testing in accordance with FHWA regulations; (5) provides a Verified Adulterated or Substituted test; (6) engages in conduct that clearly obstructs the testing process; (7) fails to remain at the collection facility until all testing is completed; or (8) refuses to submit to a direct observation when required by the collector or employer. A refusal includes not providing a breath sample or urine as directed, refusing to sign appropriate control forms, not being readily available following an accident, using alcohol within eight hours of an accident, or tampering with a sample.
Safety-sensitive function	Any of those on-duty functions set forth in 49 CFR section 395.2 and as defined under "On duty time."
Split-Specimen	A division of the original urine sample that is stored by the lab when provided by the collection agency for a second test to be used when the primary test results are challenged.
Substance Abuse Professional (SAP)	A licensed physician, or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and drug related disorders.
Substituted specimen	A specimen with creatine and specific gravity values that are so diminished that they are not consistent with human urine.

WORD/PHRASE	DEFINITION
Supervisor	For purposes of this policy, "supervisor" is defined as any one of the following positions: Director of Public Works, Deputy Director of Public Works, Utility Systems Manager, Maintenance Supervisor, or in their absence a designated trained individual.
Toxicological Laboratory	A drug abuse service laboratory licensed to perform alcohol and drug testing under the auspices of the federal government with specific expertise and chain of custody procedures, split specimen sampling, and drug/alcohol record-keeping methodologies. The agency must have all necessary personnel, materials, equipment, facilities and supervision to provide for the collection, security, temporary and long-term storage and transportation or shipment of the samples to a laboratory.

I. COVERED EMPLOYEES

A. Covered employees must comply with the alcohol and drug testing requirements of this program. "Covered employees" are those employees who are required to drive, or may be required to drive, or have the potential to drive, and who meet any of the three following qualifications.

1. They are required by the City to possess a Commercial Driver's License (Class A or B) to do their jobs.
 - a. This includes all regular, probationary, temporary, and work-out-of class assignments in job positions which require a Commercial Driver's License.
 - b. This also includes applicants to jobs with the City which require the possession of a Commercial Driver's License.
2. They operate a commercial motor vehicle.

Commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

- a. Has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or
- b. Has a gross vehicle weight rating of 26,001 or more pounds; or
- c. Is designed to transport 16 or more passengers, including the driver; or

- d. Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded and over 1,000 lbs. under the Hazardous Materials Regulations.²
3. They are performing safety-sensitive functions.
- a. "Safety-sensitive function" means any of the following functions:
 - 1) All time spent at the driving controls of a commercial motor vehicle in operation;
 - 2) All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth;
 - 3) All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded;
 - 4) All time spent performing the requirements for covered employees who are involved in an accident, as further described in Section X of this program;
 - 5) All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle;
 - 6) All time inspecting, servicing or conditioning any commercial motor vehicle at any time.
 - b. A covered employee" performs a safety-sensitive function" during any period in which the employee is actually performing, ready to perform, or immediately available to perform any safety-sensitive function.
 - c. Employees who have the required commercial license and who want to be immediately available to perform safety-sensitive functions in a temporary, stand-by, call back, or

²49 C.F.R. part 172, subpart F.

work-out-of-class status, will be subject to the provisions of this program.

4. Covered employees will also include any employee who has a Commercial Driver's License where the medical examination and/or license fees are paid for by the City.

II. GENERAL PROVISIONS FOR ALL ALCOHOL AND DRUG TESTING PROGRAMS

A. Notice to Covered Employees That Alcohol and Drug Testing is Required By Federal Law

Before performing an alcohol or drug test under this program, the City shall notify the employee that the alcohol or drug test is required by federal law.

B. Administration of the City's Alcohol and Drug Testing Program

The City has designated Drug Program Coordinator in the Human Resources Office to answer employee questions about the City's alcohol and drug testing program and procedures.

C. Record Retention Requirements

In compliance with the record retention requirements under the OTETA, the City shall maintain confidential records of its alcohol and drug misuse prevention program in a secure location with controlled access. Records of positive results, documentation of refusals to take test, calibration documentation for breath testing devices, and driver evaluation and referrals shall be maintained for five years in accordance with federal law. The City or its service agent shall generate an annual calendar year summary of the results of its program, which will also be retained for five years. Records relating to the alcohol and drug collection process and training, including collection logbooks, documents relating to the random selection process, breath alcohol technician training, documents relating to reasonable cause tests, port-accident tests, and random tests, compliance, and evaluation, shall be maintained for up to five years. The City or its service agent shall prepare an annual summary by March 15 for the previous year containing specific information as to the number of covered employees, who refused to submit to tests, the number of supervisors receiving training, the covered employees, the number and types of tests given, the results, the number of covered employees who refused to submit to tests, the number of supervisors receiving training, the covered employees who returned to duty after a positive test, and other similar information.

D. Access to Records

Covered employees are entitled, upon written request to the Human Resources Office to obtain copies of any records pertaining to the employee's misuse of alcohol or drugs, including any records pertaining to his or her alcohol or drug tests. The City shall promptly provide the records requested by the employee.

Copies of or information in these records shall not be otherwise released to any other person except as follows:

1. To the Drug Program Coordinator and the Personnel Officer who require access to these records to comply with the requirements of federal law and this program;
2. To federal, state or local officials with regulatory authority over the City or any of its covered employees and who have legitimate need for access;
3. To a decision maker in connection with a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, and arising from the results of an alcohol and/or drug test administered under this program, or from the City's determination that the covered employee engaged in conduct prohibited by Section III of this program; or
4. To a person identified by the covered employee in accordance with the terms of the employee's written consent authorizing such release.

E. Confidentiality and Recordkeeping

The City desires to comply with the confidentiality and recordkeeping requirements. As such, the City stipulates that with the exception of the Drug Program Coordinator or designee, Collection Facility, Testing Laboratory, Medical Review Officer and Substance Abuse Professional, the results of individual tests shall not be released to anyone without the expressed written authorization of the tested individual, unless ordered by means of proper legal procedure and appropriate legal authority, such as a court ordered subpoena, or in connection with a City disciplinary, grievance or arbitration proceeding initiated by or on behalf of the individual and arising from a certified positive alcohol or drug test.

To maintain confidentiality, records pertaining to program administration, the collection process and individual test records will not be a part of the

individual personnel files. A separate test records retention system will be maintained by the Drug Program Coordinator.

The records will be secured and maintained by the Drug Program Coordinator. Access to the test records is restricted to the Drug Program Coordinator and the Personnel Officer. The release to City Management of such information from the Drug Program Coordinator, medical sources of the Medical Review Officer will require the signed release of the employee. Unless noted, such records are permanent and are subject to examination by the Drug Program Coordinator, the Personnel Officer or their designee.

However, information related to an employee's availability for work will be provided to the employee's supervisor to insure that an employee is removed from a safety-sensitive function when necessary, accommodated in a non-safety-sensitive function, when appropriate. In the case of reasonable cause testing, the supervisor will receive the results of the alcohol and/or drug tests.

Collection and test records of employees producing negative alcohol and drug tests must be retained for one year. Collection and test records of employees producing positive alcohol tests of 0.02 Breath Alcohol Concentration or greater must be retained for three years and positive drug test must be retained for five years.

The following lists of records shall be retained and maintained by the Drug Program Coordinator:

1. Supporting documents for pre-employment, post accident, reasonable cause or random testing decisions.
2. Records of 2-year drug and alcohol testing histories of new hires.
3. Records of the collection process to indicate specimen identification, accountability and chain of custody.
4. Any individual reports or records provided directly to the tested employee by the Medical Review Officer.
5. Records of test results and any information provided by the affected employee concerning split samples, retests, or follow-up tests.
6. Return to work test records.
7. All reports forwarded to reporting agencies.

8. Records and documents provided by the Drug Program Coordinator, Rehabilitation Agencies and any consultants.

III. PROHIBITIONS

A. It is UNLAWFUL for covered employees to do the following:

1. To perform safety-sensitive functions after a positive alcohol test result indicating a 0.04 Breath Alcohol Content or a positive drug test result, regardless of when the alcohol or drug was ingested and regardless of whether or not the employee is under the influence of alcohol or drugs;
2. Report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. No employer having actual knowledge that a driver has an alcohol concentration of 0.04 or greater shall permit the driver to perform or continue to perform safety-sensitive functions (See Federal Register, Section 382.201);
3. Perform or continue to perform safety-sensitive functions with an alcohol concentration of 0.02 to 0.04 (see Federal Register, Section 382.505);
4. To use alcohol or products containing alcohol while performing safety-sensitive functions;
5. To perform safety-sensitive functions within four hours after using alcohol or products containing alcohol;
6. To use alcohol or products containing alcohol for eight hours following an accident for which the employee is required to take a post-accident alcohol test;
7. To report for duty or remain on duty and perform safety-sensitive functions when the employee is currently using a drug, unless the use of the drug is prescribed by a physician. (Employees who are taking prescribed medication that may impair their ability to perform safety-sensitive functions are required to inform their supervisor immediately and prior to performing any safety sensitive functions.)
8. To refuse to submit to any of the alcohol or drug test required by OTETA (random, post-accident, reasonable cause, follow-up, return to duty test) and alcohol/drug testing rules as described in

this program.

A "refusal to submit" to an alcohol or drug test means that a covered employee:

- a. Fails to arrive at the collection site within a reasonable time, as determined by the employer
- b. Refuses to take the test;
- c. Fails to provide adequate breath for testing without a valid medical explanation after he or she has received notice of the requirement for breath testing in accordance with this program;
- d. Fails to provide adequate urine for drug testing without a valid medical explanation after he or she has received notice of the requirement for urine testing in accordance with this program; or
- e. Provides a Verified Adulterated or Substituted test
- f. Engages in conduct that clearly obstructs the testing process.
- g. Fails to remain at the collection facility until all testing is completed
- h. Refuses to submit to a direct observation when required by the collector or the employer.

- B. The following drugs are specified in the law and will be analyzed during drug testing.

<u>Drug</u>	<u>Initial Screen (ng/ML)</u>	<u>Confirmation Level</u>
Marijuana	50	15
Cocaine	300	150
Amphetamines/ methamphetamine	1,000	500
Opiates	300	300
Phencyclidine (PCP)	25	25

IV. CONSEQUENCES TO ENGAGING IN ANY GENERAL PROHIBITION

Any covered employee who engages in any action prohibited by this program under Section III will be subject to the following consequences.³

- A. The employee shall be relieved from performing safety-sensitive functions.
- B. The employee shall be immediately suspended according to Section VI .
- C. The employee shall be evaluated by a substance abuse professional who shall determine what assistance, if any, the employee needs in resolving problems associated with the misuse of alcohol or drugs.
- D. After the completion of the suspension period, the employee may return to work as soon as medically certified by the MRO/SAP. The employee must, however, provide a negative test result and be certified for return to duty no later than 90 calendar days after notification of the positive test result.
The employee must, at a minimum, provide 6 follow-up tests during the first year following the employee's return to safety sensitive duties. The SAP will establish the number and frequency of follow-up tests and that follow-up testing may last up to 5 years. Failure to be certified by the MRO/SAP or return to work shall result in termination.
 - 1. The employee may use accumulated vacation, sick leave, personal leave, comp time or leave without pay while undergoing treatment/rehabilitation.
 - 2. Leave accruals may not be used for discipline such as a suspension.
 - 3. Any employee who is given an alcohol confirmation test according to 49 CFR 40.65 by the BAT and the breath alcohol concentration level is 0.02 or greater, but less than 0.04, shall be required to take leave without pay, or use vacation or personal leave but not sick leave time, until the driver's next regularly scheduled duty period, but not less than 24 hours following administration of the test. Any employee who is given an alcohol confirmation test by the BAT and the breath alcohol concentration level is 0.02 or greater, but less than 0.04, on the second time shall be suspended without pay for five regularly scheduled work days. The employee shall be referred to the SAP for evaluation and assessment of fitness for

³For consequences to outside applicants, please see Section VIII (D)(4) of this program regarding pre-employment testing.

duty.

4. Any employee who has a breath alcohol concentration level that is 0.02 or greater, but less than 0.04, on the third time within a five (5) year period will be treated as the second step in random testing.
- E. Any covered employee who refuses to submit to an alcohol or drug test required by this program shall be terminated.
- F. The City's Drug Program Coordinator or designee will assist in advising the employee of the resources available to the employee in evaluating and resolving problems associated with the misuse of alcohol or drugs, including the names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs.

V. SELF-IDENTIFICATION PROCEDURE

Covered employees are encouraged to advise the City if they are involved with the misuse of alcohol or for the use of drugs. This procedure is available only to covered employees who have not been notified of a random test, reasonable cause test or a post-accident test. This procedure cannot be used by covered employees to avoid the consequences for a positive test or a refusal to test.

PROCEDURE

If an employee self-identifies a problem with misuse of alcohol or drugs, the City will refer the employee to an SAP. Prior to returning to a safety-sensitive position, the employee will be tested.

If the SAP determines that the employee requires participation in a rehabilitation program, the employee will be referred to his/her own medical insurance plan and/or the City's Employee Assistance Program (EAP). The City is not required to pay for treatment beyond the cost contributed for those programs as stated in the AFSCME MOU..

If an employee self-identifies a second time, it will be treated as a first incident of a positive test through random testing.

VI. PERSONNEL ACTIONS

A. Disciplinary Action for Misconduct

Any covered employee who engages in an act prohibited by Section III of this program violates federal law. Employee violations of this program

may constitute misconduct under The City of Morgan Hill' Personnel Rules and Regulations, Section 12, "Disciplinary Actions" or its successor.

- B. Nothing in this section shall be interpreted as interfering with the City's right to remove from the workplace an employee who poses a direct threat to the employee or others.
- C. All disciplinary action under this program is subject to the disciplinary procedures contained in the City's Personnel Rules and Regulations.
- D. The following is a guideline for disciplinary action when an employee violates the City's alcohol and drug program. Discipline shall be based on the degree of the offense and in accordance with the following guidelines:
- E. DISCIPLINARY GUIDELINES

RANDOM TESTING

- 1st
 - * Counseling
 - * Suspension (5 days)
 - * Participate and complete rehabilitation, if necessary
 - * Last Chance Agreement
- 2nd
 - * Termination

POST ACCIDENT TESTING

- 1st
 - * Discipline (suspension or termination) dependent on seriousness of accident and/or the degree of disregard for safety
 - * "Last Chance" Agreement
 - * Participate and complete rehabilitation, if necessary

2nd * Termination

REASONABLE SUSPICION

1st * Counseling
* Suspension (5 days)
* Last Chance Agreement
* Participate and complete rehabilitation, if
necessary

2nd * Termination

SELF-IDENTIFICATION

- 1st
- * No discipline
 - * Referred to SAP
 - * Participate and complete rehabilitation, if necessary

PROBATIONARY EMPLOYEES

- Positive
- D
r
u
g
- 2nd
- T
e
s
t
- * Termination of probation. However, at the City's option, if an employee has status in a previous classification, the employee's probationary appointment may be terminated or the employee may remain on probation and be subject to these disciplinary guidelines depending on the severity of the case and the classification

- Positive
- A
l
c
o
h
o
l
- * Termination of probation. However, at the City's option, if an employee has status in a previous classification, the employee's probationary appointment may be terminated or the employee may remain on probation and be subject to these disciplinary guidelines depending on the severity of the facts of the case and the classification.

T
e
s
t

(

.

0

4

o

r

g

r

e

a

t

e

r

)

- Positive
- A
l
c
o
- * Termination of probation. However, at the City's option, probationary employee may be referred to SAP and required to participate in rehabilitation, if necessary. Any second positive test for alcohol

h
o
l

T
e
s
t

(
.
0
2

t
o

.
0
4
)

during probation will result in termination of probation. However, at the City's option, if an employee has status in a previous classification, the employee may remain on probation and be subject to these disciplinary guidelines depending on the severity of the case and the classification. Any second positive test showing a result between 0.02 and 0.04 after completion of probation will be treated as the first step in the appropriate category.

OTHER FACTORS

1. If an employee has a confirmed positive test from follow-up testing, the employee will be given a last chance agreement unless he/she is already on a last chance agreement at which point he/she will be terminated.
2. If an employee is required by an SAP to participate in rehabilitation and the employee refuses to participate in the required rehabilitation program, the employee will be terminated.
3. If an employee is required by an SAP to participate in rehabilitation and the employee fails to complete the required rehabilitation program, the employee will be terminated.
4. If an employee refuses to be tested under this program, the employee will be terminated.

VII. DRUG AND ALCOHOL TESTING METHODOLOGY

A. Alcohol Testing

Alcohol testing shall be done based on an "evidential breath testing device" which is the testing method used by law enforcement officials in drunk driving cases. A breath alcohol technician shall explain the test to the employee being tested and properly administer the test to the employee.

B. Drug Testing

Drug testing shall be done based on a "split specimen" procedure of collecting and analyzing urine samples. The specimen taken will be divided into primary and secondary specimens. If the primary specimen test is positive, the employee shall be informed of their right to request a test of the secondary specimen by a separate laboratory or by the same laboratory, if they choose, at the employee's expense. The employee will be removed from the safety-sensitive function pending the outcome of the secondary sample test results. The employee has 72 hours within which to make the request for the secondary sample test. If the secondary test result is negative, the City shall reimburse the employee for the cost of the secondary test and all references to the positive test will be expunged from all records. If the secondary test result is positive, the employee will be subject to the procedures in Section III of this program.

C. Chain of Custody/Confidentiality

All alcohol and drug tests required to be administered to covered employees under this program shall be conducted by the City's service providers to ensure appropriate chain of custody and confidentiality of results.

VIII. PRE-EMPLOYMENT ALCOHOL AND DRUG TESTING

A. Preface

Prior to performing any safety-sensitive functions for the City of Morgan Hill, the employee or applicant shall undergo testing for alcohol and drugs. The City shall not allow a covered employee to perform safety-sensitive functions unless the employee has been administered an alcohol test with a result indicating an alcohol concentration less than 0.02, and has received a drug test result indicating a verified negative test result.

B. Procedures

1. All regular, probationary, temporary, limited term, and work-out-of class assignments in job positions which require a Commercial Driver's License and the performance of safety-sensitive functions are subject to pre-employment testing.
2. All persons selected by the Personnel Officer and offered a position from an appropriate employment list for a job position requiring a Commercial Driver's License and the performance of safety-sensitive functions are subject to pre-employment testing. This section applies equally to current employees of the City and outside applicants. The drug samples may be collected during pre-employment medical examinations and the samples will be provided to the City certified laboratory.
3. Every job announcement and internal transfer opportunities bulletin for a position requiring a Commercial Driver's License and the performance of safety-sensitive functions will include a written statement of the alcohol and drug testing requirement as stated above.
4. Pursuant to the City's Policy regarding Substance Abuse, all job positions are subject to pre-employment alcohol and drug testing.
5. All pre-employment alcohol and drug tests will be conducted by the City's service providers to ensure appropriate chain of custody and confidentiality of results.

C. Exceptions to Pre-Employment Testing

1. Persons employed by the City upon implementation of the program and who are in positions requiring the possession of a Commercial Driver's License and perform safety-sensitive functions will not be required to submit to initial drug testing to continue in their jobs. Commencing on implementation of the program, all other persons who are entering into positions requiring the possession of a Commercial Driver's License and the performance of safety-sensitive functions, (for example, but not limited to, new hires, rehires, transfers, and return-to-duty from any leave of absence for 20 consecutive working days or more), shall be required to submit to pre-employment testing under this program.
2. Current employees in covered classes will not be required to submit to pre-employment testing if they have been tested within the last 12 months in their current position.

3. Current employees of the City who wish to be eligible for temporary or work-out-of-class assignments, and have previously passed pre-employment alcohol and drug tests and agreed to remain within the pool of employees from which random testing is conducted.

D. Consequences

1. Any covered employee who tests positive on a drug test or has an alcohol test result of 0.04 Breath Alcohol Content or greater, will be removed from the safety-sensitive eligibility list and will be subject to the provisions in Section IV. The employee may, however, reapply for future safety-sensitive position with the City and will be subject to testing in accordance with this program at that time.
2. If the pre-employment alcohol test result indicates an alcohol content of 0.02 or greater but less than 0.04, the employee will have the right to request retesting of the second split specimen at their expense. If the retest result is negative, the employee will be reimbursed the cost by the City and the employee will be considered for the safety sensitive position. If the retest is positive, the employee will be removed from the safety-sensitive eligibility list and will be subject to the provisions in Section IV. The employee may, however, reapply for future safety-sensitive positions with the City and will be subject to testing in accordance with this program at that time.
3. All outside applicants for positions with the City which require the possession of a Commercial Driver's License and the performance of safety-sensitive functions must submit to pre-employment alcohol and-drug testing without exception. Any applicant who has a confirmed positive test for alcohol or drugs or refuses to take the test, will not be hired.

IX. NEW HIRE DRUG AND ALCOHOL RECORD CHECK

A. Preface

The City is required to request information about safety employees from previous DOT-regulated employers who have employed the new hires during any period preceding the two years before the date of the new hire's application or transfer. After obtaining written consent from the employee, the City must request information from previous DOT-regulated employers regarding alcohol tests with results of 0.04 or higher concentration, verified positive drug tests, refusals to be tested and other violations of DOT agency and drug and alcohol testing

regulations. In respect to any employee who violated a regulation, the City must obtain documentation of the employee's successful completion of DOT return-to-duty requirements.

B. Procedures

1. The City will obtain the written consent of any employee seeking to begin performing safety-sensitive duties for the first time, such as a new hire or an employee transferring into a safety-sensitive position. If the employee refuses to provide this written consent, the City will not permit the employee to perform safety-sensitive functions.
2. The City will request the following information from the employee's previous DOT-related employers:
 - a. Alcohol tests with a result of 0.04 or higher alcohol concentration.
 - b. Verified positive drug tests.
 - c. Refusals to be tested (including verified adulterated or substituted drug test results).
 - d. Other violations of DOT agency drug and alcohol testing regulations.
 - e. With respect to any employee who violated a DOT drug and alcohol regulation, documentation of the employee's successful completion of DOT return-to-duty requirements (including follow-up tests). If the previous employer does not have information about the return-to-duty process (e.g., an employer who did not hire an employee who tested positive on a pre-employment test) the City will seek to obtain this information from the employee.
 - f. This information obtained from a previous employer includes any drug or alcohol test information obtained from previous DOT-regulated employers. The City will obtain a release of information from the new hire. This release will accompany the request for information, and will maintain a written, confidential record of this information, including the date, the party to whom it was released, and a summary of the information provided.
3. The City will maintain a written, confidential record of the

information obtained or of the good-faith effort made to obtain the information. The City will retain this information for three years from the date of the employee's first performance of safety-sensitive duties.

4. The City must ask the employee whether he or she has tested positive, or refused to test, on any pre-employment drug or alcohol test administered by an employer to which the employee applied for, but did not obtain, safety-sensitive work covered by DOT agency drug and alcohol testing rules during the past two years. If the employee admits that he or she had a positive test or a refusal to test, the City will not use the employee to perform safety-sensitive functions unless the employee documents successful completion of the return-to-duty process.
5. If the City has not obtained results pre-employment drug or alcohol testing or made a documented good-faith effort to obtain this information within 30 days of the hire date, the employee must be removed from performance of safety-sensitive functions.
6. The City must comply with requests for two-year drug and alcohol testing histories from any future employers of personnel covered by this policy.

X. RANDOM ALCOHOL AND DRUG TESTING

A. Preface

Covered employees are required to submit to alcohol and drug testing on a random basis. Twenty-five percent of the average number of covered employee positions shall be subject to random alcohol testing in each calendar year. Fifty percent of the average number of covered employee positions shall be subject to random drug testing in each calendar year. The City will change the minimum annual percentage testing rate in compliance with any change by the Federal Highway Administration (FHWA) Administrator to increase or decrease the annual violation rate. The FHWA annual violation rate is based on the reported rate for commercial drivers.

B. Procedures

1. The Provider shall randomly select a sufficient number of covered employees for alcohol and drug testing during each calendar year to equal an annual rate not less than the minimum annual percentage rate established by the FHWA Administrator.

2. The Provider shall select covered employees for random alcohol and drug testing by a scientifically valid method, such as a random number table of a computer-based random number generator matched with the covered employees' Social Security numbers, City identification numbers, or other comparable identifying number. Under the selection process used, each covered employee shall have an equal chance of being tested each time selections are made.
3. Random alcohol and drug tests shall be unannounced and the dates for administering random alcohol and drug tests shall be spread reasonably throughout the calendar year.
4. Each covered employee who is notified of selection for random alcohol or drug testing shall go to the test site immediately. If a notified employee is performing a safety-sensitive function, the employee shall cease to perform that safety-sensitive function and go to the testing site as soon as possible.
5. A covered employee shall only be tested for alcohol while the employee is performing safety-sensitive functions, or four hours before the employee is to perform safety-sensitive functions, or four hours after the employee has ceased performing such functions. The employee will be on City paid time during the testing process
6. A covered employee may be tested for drugs at anytime while the employee is at work for the City.
7. The City shall not require any covered employee to submit to a random test while the employee is off work. If a covered employee is off work, the City will skip the employee's name and the next employee's name on the selection list will be selected and tested. The City shall document that the employee was off work and that the employee was in the random selection pool for that cycle. If the employee's absence lasts for more than 30 days, the pre-employment testing provisions of this program shall apply.
8. Pre-trip inspections may be used for the purposes of testing for alcohol as a method of performing safety-sensitive functions. However, if the pre-trip inspection is not appropriate, the employee may be requested to perform other safety-sensitive functions (e.g., driving a truck or loading a truck) in order to comply with the requirements for alcohol testing.

9. Upon notification of a Negative Dilute, the City may immediately re-test the employee.

C. Consequences

1. Covered employees shall be subject to the referral, evaluation, and rehabilitation requirements in Section IV and may be subject to disciplinary action under Section VI of this program if they refuse to submit to a random alcohol or drug test or if they have an alcohol test with a result indicating an alcohol concentration of 0.04 or greater or a drug test with a verified positive test result.
2. Any covered employee who has engaged in conduct in violation of Section III concerning the use of alcohol or who has had an alcohol test with a result of 0.02 to 0.04 Breath Alcohol Content or greater shall not return to duty until the employee has submitted to a return to duty alcohol test with a verified negative result. In addition, the employee will be evaluated by the SAP and develop a treatment methodology, if necessary and may be subject to the referral, evaluation, and rehabilitation requirements in Section IV of this program.

XI. POST-ACCIDENT ALCOHOL AND DRUG TESTING

A. Preface

As soon as practicable following an accident, the City shall test a surviving covered employee for alcohol and drugs, where the accident has resulted in any one of the following conditions:

1. Death of a human being.
2. Bodily injury to a person who, as a result of the accident, receives medical treatment away from the scene of the accident.
3. The covered employee received a citation or there is a high probability that the covered employee will receive a citation for a moving traffic violation arising from performance of a safety-sensitive function with respect to the accident. In the case where it is not immediately known if the above criteria is met, the employee will provide a sample and the sample will not be tested until it is determined that the criteria for post-accident testing are met.
4. At least one of the involved vehicles is required to be towed from

the scene of the accident.

Following the accident, the covered employee will be tested as soon as possible, not to exceed eight hours for alcohol and thirty-two hours for drugs.

B. Procedures

1. These procedures do not supersede the Vehicle Use Policy contained in the City of Morgan Hill's Administrative Policy and Procedure Manual or any other departmental policy or procedure regarding reporting of vehicle accidents, incidents, citations, or damage.
2. The covered employee shall notify his or her supervisor as soon as possible following an accident. The covered employee shall refrain from using alcohol for eight hours following the accident or until he or she undergoes a post-accident alcohol test is not required as provided below. Any employee leaving the scene of the accident without appropriate authorization prior to submitting to an alcohol or drug test or being released by the supervisor will be considered to have refused to test.
3. The supervisor at the site of an accident shall:
 - a. Attend to any emergency needs of employees, passengers, pedestrians, etc., by requesting medical, fire and/or police assistance, and the presence of another supervisor;
 - b. Take the covered employee involved in the accident aside and give the employee a direct verbal order to abstain from alcohol and drugs until after they have been tested or until after eight hours for alcohol or thirty-two hours for drugs and to stand by at the site until the supervisor has determined if the accident is one requiring a post-accident alcohol and drug test;
 - c. Evaluate the accident to determine whether a post-accident test is required under this program and document with written notes the supervisor's decision to require or to not require a post-accident alcohol and drug test.
4. If the supervisor at the site affirms that a post-accident alcohol or drug test of the covered employee is required, the supervisor shall take the following actions:

- a. The supervisor shall inform the covered employee the test is required by the OTETA. The supervisor will also explain that by refusing to take the alcohol and drug tests, the employee will be subject to the mandatory referral, evaluation and rehabilitation requirements of this program. Refusal to take the tests will subject the employee to disciplinary action in accordance with Section IV of this program.

Any employee who refuses to submit to a post-accident test as required by federal law shall be terminated from employment pursuant to Section IV. The employee will be offered the opportunity to be safely transported home. If an employee appears to be impaired, refuses the post-accident alcohol and drug test, and intends or attempts to drive home, the City will inform the employee that it is required to notify the proper authorities.

- b. The supervisor shall transport the employee to the designated collection site to take the necessary tests. The supervisor shall inform the employee that they have a right to request a steward. However, the process will proceed whether or not the steward is present. The supervisor transporting the employee will stay with the employee, verify the employee's identification at the collection site and later return the employee to the employee's division or work unit.
 - c. If the covered employee is injured and requires off-site treatment, the supervisor shall escort the employee to a hospital or other appropriate treatment facility. The hospital will be requested to collect the necessary specimen and provide safe-keeping until the sample is picked up by the City collection agency.
 - d. The supervisor shall ensure that the covered employee does not perform any safety-sensitive function until the employee is cleared by the post-accident test results. This includes ensuring that neither the covered employee nor any other employee involved in the accident operates the vehicle any further. If necessary, the supervisor will move the vehicle or request another employee not involved in the accident to do so.
5. If the supervisor at the site of the accident determines that the accident does not meet the criteria for a post-accident alcohol and

drug test, the covered employee may continue to perform safety-sensitive functions.

6. If the covered employee is taken into police custody at the site of an accident and the site supervisor has affirmed that the accident is one requiring post-accident drug testing, the City's collection agency will be requested to test the employee for alcohol and drugs.
7. If a post- accident alcohol test is required and is not administered within two hours following the accident, the City shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If the alcohol test is not administered within eight hours, the City shall cease attempts to administer an alcohol test and shall prepare and maintain the same record.
8. If a post-accident drug test is required and is not administered within thirty-two hours following the accident, the City shall cease attempts to administer a drug test and shall prepare and maintain on file a record stating the reasons the test was not promptly administered.

C. Consequences

1. Covered employees shall be subject to the referral, evaluation, and rehabilitation requirements in Section IV and shall also be subject to the disciplinary consequences of Section VI of this program if they refuse to submit to a post-accident alcohol or drug test or if they have a post-accident alcohol test with a result indicating an alcohol concentration of 0.04 or greater or a drug test with a verified positive test result.
2. Any covered employee who has engaged in conduct in violation of Section III concerning the use of alcohol or who has had an alcohol test with a result of 0.02 to 0.04 Breath Alcohol Content or greater shall not perform a safety-sensitive function until the employee has submitted to a return to duty alcohol test with a verified negative result. In addition, the employee will be evaluated by the SAP and develop a treatment methodology, if necessary and may be subject to the referral, evaluation, and rehabilitation requirements in Section IV of this program.

XII. REASONABLE SUSPICION ALCOHOL AND DRUG TESTING

A. Preface

The City shall require a covered employee to submit to an alcohol and/or drug test when the City has reasonable suspicion to believe that the employee is under the influence of alcohol or drugs.

B. Procedures

1. The City's decision to require a covered employee to submit to a reasonable suspicion alcohol and/or drug test shall be based on a supervisor's determination that reasonable suspicion exists that the employee is in violation of Section III of this program. The City's determination must be based on:
 - a. Specific personal and articulable observations concerning the appearance, behavior, speech or performance of the employee; or
 - b. Violation of a safety rule, or other unsafe work incident which, after further investigation of the employee's behavior, leads the supervisor(s) to believe that alcohol or drug use may be a contributing factor; or
 - c. Other physical, circumstantial or contemporaneous indicators of alcohol or drug use.
 - d. Suspicion based solely on third party observation, violation of safety rule or unsafe work incident is not reasonable suspicion for testing. However, such suspicion may be a basis for further investigation, or for action to protect the safety of others, such as ordering the employee to stop work.
 - e. No action shall be taken against a covered employee based solely on the employee's behavior and appearance, with respect to alcohol or drug use, without a positive test.
2. The supervisor will obtain the assistance of another supervisor, when feasible, to observe and document the above behavior or factors.
3. The supervisor shall inform the employee of the facts upon which the reasonable suspicion is based, advise the employee that the supervisor wishes to question the employee about the employee's behavior or conduct on which the reasonable suspicion is based, and advise the employee that he or she has the right to request the presence of a steward or other representative before answering the

supervisor's questions.

- a. If the employee chooses to be represented, the steward or other representative will be allowed up to one hour to arrive. If no steward or other representative is available within one hour, the supervisor should continue the procedure.
 - b. The supervisor shall request an explanation from the employee concerning the employee's behavior or conduct on which the reasonable suspicion is based. If a satisfactory explanation is not provided, the employee will be tested.
 - c. The supervisor must complete the Observation/Incident Report within one hour of the incident. The supervisor will provide a copy of the completed Observation/Incident Report to the union. A copy should be given to the steward or other representative, if present, and another sent to the union president.
4. If the employee refuses to submit to the test, the employee will be terminated pursuant to Section VI of this program. The employee shall be offered the opportunity to be safely transported home.

If an employee appears to be impaired, refuses the reasonable suspicion alcohol and drug test, and intends or attempts to drive home, the supervisor will inform the employee that the City is required to notify the proper authorities. Again, an employee who has refused to submit to a post-accident test will be disciplined in accordance with Section VI of this program.

5. If the employee submits to the reasonable suspicion alcohol and/or drug test, the supervisor will assign the employee to non safety-sensitive duties until the supervisor receives the test results, unless in the supervisor's judgment, the continued presence of the employee in the workplace poses a significant safety risk to the employee or others or is disrupting the workplace. In that event, the supervisor shall place the employee on sick leave or other accrued leave and arrange to safely transport the employee home.
 - a. If the alcohol and/or drug test is positive, the employee will be subject to the return to duty/follow-up testing program and procedures.
6. No supervisor shall physically search an employee or an

employee's private property (purse, briefcase, car) based on the supervisor's reasonable suspicion that the employee has violated Section III of this program.

7. The supervisor(s) or City official(s) who observe(s) the employee's behavior on which reasonable suspicion testing is based must have received at least 60 minutes of training on alcohol misuse and an additional 60 minutes training on drug use. The training must cover the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of drugs.
8. No reasonable suspicion alcohol testing may be done except while the employee is performing a safety-sensitive function, four hours before the employee is to perform a safety-sensitive function, or four hours after the employee has ceased performing such function.
9. If an alcohol test is not conducted within two hours of the observation, the City must prepare and maintain a record stating the reasons the alcohol test was not promptly administered. If eight hours have passed, the City will not administer the test.
10. A written record must be made of the observations leading to an alcohol or drug reasonable suspicion test, and signed by the supervisor or City official who made the observations, within one hour of the observed behavior or before the results of the alcohol or drug test are received, whichever is earlier.

C. Consequences

1. Covered employees shall be subject to the referral, evaluation, and rehabilitation requirements contained herein and may be subject to the disciplinary consequences of Section VI of this program if they refuse to submit to a reasonable suspicion alcohol or drug test or if they have a reasonable suspicion alcohol concentration of 0.04 or greater or a drug test with a verified positive test result.
2. Any covered employee who has engaged in conduct in violation of Section III concerning the use of alcohol or has had an alcohol test with a result of 0.02 to 0.04 Breath Alcohol Content or greater shall not perform a safety-sensitive function until the employee has submitted to a return to duty alcohol test with a verified negative result. In addition, the employee will be evaluated by the SAP and develop a treatment methodology, if necessary.

XIII. RETURN TO DUTY/FOLLOW-UP TESTING

A. Preface

Covered employees who have alcohol test results of 0.04 Breath Alcohol Content or greater, or who test positive for drugs are subject to return-to-duty testing and are also subject to unannounced follow-up alcohol and/or drug test following their return to duty.

B. Procedures

1. Return to duty test

- a. Any covered employee who has engaged in conduct in violation of Section III concerning the use of alcohol or has had an alcohol test with a result of 0.04 Breath Alcohol Content or greater shall not return to duty until the employee has submitted to a return to duty alcohol test with a verified negative result. In addition, the employee will be evaluated by the SAP and develop a treatment methodology, if necessary.
- b. Any covered employee who has engaged in conduct in violation of Section III concerning the use of drugs or who has had a drug test with a positive result shall not return to duty until the employee has submitted to a return to duty drug test with a verified negative result. In addition, the employee will be evaluated by the SAP and develop a treatment methodology, of necessary.

2. Follow-up testing

- a. If an employee tests positive for either alcohol or controlled substances, he/she will be subject to unannounced follow-up alcohol and controlled substances tests following his/her return to duty. The number and frequency of such follow-up testing shall be as directed by the SAP and consist of at least six tests in the first 12 months following the employee's return to duty.
- b. Follow-up testing shall not exceed 60 months from the date of the employee's return. The SAP may terminate the requirement for follow-up testing at any time after the first six test have been administered, if the SAP determines that such testing is no longer necessary.

- c. Follow-up alcohol testing shall be conducted only when the employee is performing safety-sensitive functions, four hours before the employee is to perform safety-sensitive functions, or four hours after the employee has ceased performing safety-sensitive functions.
- d. Follow-up drug testing may be conducted at anytime while the employee is at work for the City.

C. Consequences

- 1. Covered employees shall be subject to the referral, evaluation, and rehabilitation requirements contained herein and may be subject to the disciplinary consequences of Section VI of this program if they refuse to submit to a return-to-duty or a follow-up alcohol or drug test or if they have a return-to-duty or follow-up alcohol test with a result indicating an alcohol concentration of 0.04 or greater or drug test with a verified positive test result.
- 2. Any covered employee who has engaged in conduct in violation of Section III concerning the use of alcohol or who has had an alcohol test with a result of 0.02 to 0.04 Breath Alcohol Content or greater shall not return to duty until the employee has submitted to a return to duty alcohol test with a verified negative result. In addition, the employee will be evaluated by the SAP and develop a treatment methodology, if necessary. In addition, the employee may be subject to the disciplinary consequences of Section VI of this program if they refuse to submit to a return-to-duty or a follow-up alcohol or drug test or if they have a return-to-duty or follow-up alcohol test with a result indicating an alcohol concentration of 0.04 or greater or drug test with a verified positive test result.

XIV. DOCUMENT DISTRIBUTION AND TRAINING

A. City's Alcohol and Drug Testing Programs and Procedures

Every employee who is covered by the federal alcohol and drug testing regulation as explained in this program shall be provided with a copy of this program prior to the start of alcohol and drug testing. Each employee is required to sign a statement certifying that he or she has received a copy of this program. The City will maintain the original of the signed document in the official personnel file and will provide a copy of the certificate to the employee.

B. Required Training for Covered Employee

Every covered employee will receive a one-hour training course on the City's Alcohol and Drug Testing Programs and Procedures. Each employee will sign an attendance roster and will receive a certificate of completion of this training. A copy of the certificate of completion will be placed in the employee's official personnel file. Every subsequent year, refresher training will be provided.

C. Supervisory Training

All supervisors of covered employees will receive a minimum of one hour of training for alcohol and one hour for drugs related to the City's Alcohol and Drug Testing Program and Procedures. In addition, the supervisor will be trained on alcohol and drug usage and impairment with strategies for dealing with these types of issues. Each supervisor will sign an attendance roster and will receive a certificate of completion of this training. A copy of the certificate of completion will be placed in the supervisor's official personnel file. Every subsequent year, refresher training will be provided.

CERTIFICATE OF RECEIPT
OF CITY OF MORGAN HILL & AFSCME, LOCAL 101
DRUG AND ALCOHOL TESTING PROGRAM

I, _____, understand that I am employed by the City of Morgan Hill in a position that is covered by the federal alcohol and drug testing regulations, and that I will be subject to the alcohol and drug testing programs described in this program which implements those federal alcohol and drug testing regulations. I hereby certify that the City has provided me with a copy of this program. I understand that the City will maintain the original of the signed certificate, and that I will be provided a copy of the certificate. I also understand that federal law requires the City to ensure that I have been provided with a copy of the City's alcohol and drug testing program and also requires me to sign this statement certifying my receipt of a copy of this program.

Date _____
Signature of Employee

I hereby acknowledge that I asked for and received a copy of this certificate of receipt.

Date _____
Signature of Employee

CITY OF MORGAN HILL
LAST CHANCE AGREEMENT

This Last Chance Agreement is created to assist you in understanding the severity of the issues being confronted and the City's desire that you be successful in resolving of these concerns. Successful completion of this Agreement will prevent further disciplinary action toward you for the issues stated hereafter.

EMPLOYEE

NAME: _____

EMPLOYEE

CLASSIFICATION: _____

DEPARTMENT: _____

NATURE OF THE INCIDENT:

CREATED PROGRAM FOR REHABILITATION: This may include day treatment, night programs, residential programs or some form of counseling as developed by the Substance Abuse Professional in concert with the employee.

NUMBER OF TESTS REQUIRED FOR UNANNOUNCED TESTING IN COMPLIANCE WITH THIS AGREEMENT: _____

THE AGREEMENT:

I, _____, agree to comply with the guidelines and procedures entailed in the City's Drug and Alcohol Testing Program and the conditions established in the rehabilitation program. I understand that periodic unannounced samples will be taken as a condition of continued employment. Any positive test as a result of unannounced testing will be considered a violation of this last chance agreement. Should I successfully complete the rehabilitation program described above and successfully maintain negative test results for a duration of one year for alcohol and five years for drugs, this agreement shall be null and void and a notice of completion shall be placed in my alcohol and drug file. Another incident of drug and/or alcohol use after completion of this process shall not be subject to a second last chance agreement, and I will be terminated as outlined in Section VI of the Program.

Signature of Employee

Date

Memorandum

Human Resources

Date:

To: Pam Borzone, AFSCME Local 101 President

From: Mary Kaye Fisher, HR Director

Subject: Side Letter between the City of Morgan Hill and AFSCME Local 101
Regarding the 2005-200 Negotiated MOU and Discipline Appeals

This side letter recaps and confirms discussions we had at the table during these 2005 MOU negotiations. We discussed the fact that the City of Morgan Hill Personnel Rules and Regulations Appeals Procedure (Rule 15) provides in 15.03 that an employee may appeal disciplinary action(s) to the Personnel Board. We also acknowledged that the Personnel Commission has been abolished, therefore, there is no board to hear appeals should disciplinary action occur before the new Personnel Rules and Regulations are adopted.

Together, and without either side waiving any bargaining, representational or other rights, we agreed that:

The procedure defined in Article 10 – Grievance Procedure, would be the procedure followed for disciplinary appeals.

This side letter will expire upon adoption of new City of Morgan Hill Personnel Rules and Regulations, which per Article 4.03 of the MOU provides that the City will meet and confer with the Union regarding any proposed changes to the rules. It is non-precedential and may not be used by any party or signatory in any future claim, grievance, lawsuit, or bargaining.

For the Union:

For the City:

Pam Borzone
AFSCME Local 101 President

Mary Kaye Fisher
Human Resources Director

Date:

Date:

Memorandum

Human Resources

To: Mary Kaye Fisher, HR Director

From: Pam Borzone, AFSCME Chapter President

Subject: Side letter between the City of Morgan Hill and AFSCME Local 101 regarding committee on compensation survey procedures

The parties have agreed during negotiations for the 2005 MOU that a committee will be established during the first year of the new agreement to create a procedure for conducting compensation surveys for City Job classifications. It's our intention for the committee to include representatives from all City bargaining units, employees covered by the Management Resolution, and the Human Resources Department. The committee will be chaired by the Human Resources Director.

For the Union:

//

Pam Borzone
AFSCME Chapter President

Date: 8/25/2005

Fore the City:

//

Mary Kaye Fisher
Human Resources Director

Date: 8/25/2005



Memorandum Human Resources

Date: April 7, 2006

To: Pam Borzone, AFSCME Local 101 President

From: Mary Kaye Fisher, HR Director

Subject: Side Letter between the City of Morgan Hill and AFSCME Local 101
Regarding Section 5.07 OTHER PAY, specifically pay for telephone calls
while off work

This side letter recaps and confirms discussions we had during a meeting held on February 16, 2006 at City Hall. We discussed the issue of how to compensate AFSCME employees who were off work, not on-call, and who received telephone calls regarding work-related issues or problems.

Together, and without either side waiving any bargaining, representational or other rights, we agreed that:

Employees who are off work and not on standby who are contacted and consulted by telephone about a work-related problem outside their regular work shift, and who provide advice or direction, shall be compensated at an overtime rate for the actual time spent on the telephone, rounded up to the nearest 15 minutes. The time will be recorded on timesheets as overtime.

This side letter will expire June 30, 2008. It is non-precedential and may not be used by any party or signatory in any future claim, grievance, lawsuit, or bargaining.

For the Union:

For the City:

Pam Borzone
AFSCME Local 101 President

Mary Kaye Fisher
Human Resources Director

Date:

Date:

